

Timothy Callahan
1/30/2012

1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Case No. 11-CV-03071 (SRN/JJK)

Larry E. Smith, as trustee for
the Heirs and Next of Kin of
David Cornelius Smith,

Plaintiff,

vs.

Timothy Gorman and Timothy Callahan,
acting in their individual capacities
as Minneapolis police officers,
and the City of Minneapolis,

Defendants.

VIDEOTAPED DEPOSITION TRANSCRIPT OF

TIMOTHY CALLAHAN

January 30, 2012

8:57 A.M.

at

Gaskins, Bennett, Birrell, Schupp, LLP
333 South 7th Street
Suite 2900
Minneapolis, MN 55402

Court Reporter: Janet D. Winberg, RPR

Timothy Callahan
1/30/2012

2	2
1 APPEARANCES:	1 (Witness sworn.)
2 On Behalf of the Plaintiff:	2 TIMOTHY CALLAHAN,
3 ROBERT BENNETT, Attorney at Law	3 called as a witness, being first duly sworn,
4 rbennett@gaskinsbennett.com	4 was examined and testified as follows:
5 JEFFREY S. STORMS, Attorney at Law	5 * * *
6 jstorms@gaskinsbennett.com	6 EXAMINATION
7 KATHERINE BENNETT, Attorney at Law	7 BY MR. BENNETT:
8 kbennett@gaskinsbennett.com	8 Q. Would you state your full name for the record,
9 GASKINS, BENNETT, BIRRELL, SCHUPP, LLP	9 please?
10 333 South 7th Street	10 A. Timothy Donald Callahan.
11 Suite 2900	11 Q. What is your date of birth, sir?
12 Minneapolis, Minnesota 55402	12 A. 5/29/68.
13	13 Q. Tell us your educational background.
14 On Behalf of the Defendants:	14 A. A 2-year associate in arts degree in law
15 C. LYNNE FUNDINGSLAND, Assistant City	15 enforcement.
16 Attorney	16 Q. Where?
17 lynnefundingsland@ci.minneapolis.mn.us	17 A. It was Lakewood Community College. I'm not sure
18 BURT T. OSBORNE, Assistant City Attorney	18 what it's called now.
19 burt.osborne@ci.minneapolis.mn.us	19 Q. When did you get that?
20 TRACEY FUSSY, Assistant City Attorney	20 A. I went there in the very early '90s. '91, '92.
21 tracey.fussy@ci.minneapolis.mn.us	21 Q. When did you graduate from high school?
22 CITY OF MINNEAPOLIS-OFFICE OF CITY ATTORNEY	22 A. 1986.
23 350 South Fifth Street	23 Q. What high school?
24 City Hall, Room 210	24 A. Stillwater High School.
25 Minneapolis, Minnesota 55415	25 Q. What did you do between 1986 and attending
VIDEOGRAPHERS:	
Chris Grey	
John Heinen	
Nick Nichols	
NOTE:	
The original transcript will be delivered to the	
noticing party, Gaskins, Bennett, Birrell & Schupp.	
NOTE:	
Exhibits 15, 21 - 26, 28, 30, 31, 33, 34, 35, 37, 38,	
40 and 48 were marked/introduced/reviewed.	
3	5
1 PROCEEDINGS	1 Lakewood?
2	2 A. Various jobs. Landscaping. Um...
3 MR. BENNETT: So the video record can	3 Q. Were you in the military service at all?
4 reflect that we are here to take the videotape	4 A. No, I wasn't.
5 deposition of Defendant Timothy Callahan	5 Q. So was it mostly landscaping, is that what you
6 pursuant to agreement of the parties and the	6 did for those few years?
7 Court's order and for this truncated deposition	7 A. Mostly, yes. Oh, I worked for a security
8 in the matter of Larry E. Smith, as trustee for	8 company for about a year.
9 the heirs and next-of-kin of David Cornelius	9 Q. What one?
10 Smith versus Timothy Gorman and Timothy	10 A. American Security.
11 Callahan, acting in their individual capacities	11 Q. They still exist, don't they?
12 as Minneapolis police officers and the City of	12 A. I believe so.
13 Minneapolis.	13 Q. Yeah. And what's your date of hire at the
14 It is United States District Court, District	14 Minneapolis Police Department?
15 of Minnesota, Case File Number 11 CV 03 071	15 A. September of '93.
16 SRN/JJK.	16 Q. And what has... What have been your duties
17 We'll do appearances.	17 since '93?
18 Robert Bennett, Jeffrey Storms and Katherine	18 A. 911 responding. Working the street in a patrol
19 Bennett on behalf of the plaintiff.	19 car for the most part.
20 MS. FUNDINGSLAND: On behalf of the	20 Q. And you are a patrol officer?
21 defendants, Lynne Fundingsland, Tracey Fussy and	21 A. Yes.
22 Burt Osborne.	22 Q. Ever take the sergeant's exam?
23 MR. BENNETT: Madam Court Reporter,	23 A. Ah, yeah.
24 would you swear the witness?	24 Q. Did you pass?
25 * * *	25 A. I've passed the written before.

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<p style="text-align: right;">6</p> <p>1 Q. Do you know where you are on the sergeant's</p> <p>2 list?</p> <p>3 A. I'm not on the sergeant's list currently.</p> <p>4 Q. All right. When was the last time you were on</p> <p>5 the sergeant's list?</p> <p>6 A. I don't know. A long time ago.</p> <p>7 Q. Not --</p> <p>8 A. 10 years ago.</p> <p>9 Q. Okay. In the '90s?</p> <p>10 A. Well, I was never on the list.</p> <p>11 Q. Okay. Have you been on... What sort of duty</p> <p>12 assignments have you had?</p> <p>13 A. I've worked in the 2nd Precinct and I've worked</p> <p>14 in the 1st Precinct.</p> <p>15 Q. How long in each one?</p> <p>16 A. I was assigned to the 2nd Precinct until '99.</p> <p>17 And in '99 I came to the 1st Precinct.</p> <p>18 Q. Have you ever been deposed before, as opposed to</p> <p>19 giving trial testimony?</p> <p>20 A. No.</p> <p>21 Q. What documents did you -- or videos did you</p> <p>22 review in preparation for your deposition today?</p> <p>23 A. The same videos that would have been shown at</p> <p>24 the grand jury.</p> <p>25 Q. Okay. How do you know the videos were shown at</p>	<p style="text-align: right;">8</p> <p>1 A. The -- the interrogatories? I'm not sure what</p> <p>2 you mean.</p> <p>3 Q. Showing you Exhibit 21. Those are the answers</p> <p>4 that you signed to your interrogatories.</p> <p>5 A. Yes, I'm familiar with them.</p> <p>6 Q. Did you read those?</p> <p>7 A. Yes.</p> <p>8 Q. You know, I noticed in answer to Interrogatory</p> <p>9 Number 2 you list a bunch of people that you</p> <p>10 spoke to about the incident; correct?</p> <p>11 A. Yes.</p> <p>12 Q. You made a call that's recorded on your</p> <p>13 pen camera, correct, at the scene?</p> <p>14 A. Yes.</p> <p>15 Q. Who was that call to?</p> <p>16 A. My wife.</p> <p>17 Q. And what's her name?</p> <p>18 A. Susan.</p> <p>19 Q. So you would have talked to her about that, as</p> <p>20 well; correct? Including on the -- on that date</p> <p>21 and time where you made the call?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Is there anybody else that you spoke</p> <p>24 to about this incident that's not on this list</p> <p>25 -- on your answer to Interrogatory Number 2?</p>
<p style="text-align: right;">7</p> <p>1 the grand jury?</p> <p>2 A. I believe we looked at at least one of them.</p> <p>3 Q. In front of the grand jury?</p> <p>4 A. I think.</p> <p>5 Q. Which one? The pen camera, or --</p> <p>6 A. Yeah.</p> <p>7 Q. -- the Taser or the YMCA photo?</p> <p>8 A. The pen one.</p> <p>9 Q. All right. When did you get the pen camera?</p> <p>10 A. When did I purchase it?</p> <p>11 Q. Yeah.</p> <p>12 A. Maybe a few months -- 6 months before September</p> <p>13 of 2010.</p> <p>14 Q. Where did you get it?</p> <p>15 A. I have no idea. I got it... I saw it online</p> <p>16 and I purchased it online.</p> <p>17 Q. Okay. So you looked at the videos. Anything</p> <p>18 else?</p> <p>19 A. I don't... As in... I don't understand.</p> <p>20 Q. Well, did you look at any other documents? Did</p> <p>21 you read your answers to interrogatories?</p> <p>22 A. I've seen my own statement.</p> <p>23 Q. Okay. Did you read your answers to</p> <p>24 interrogatories before -- in preparation for the</p> <p>25 deposition today?</p>	<p style="text-align: right;">9</p> <p>1 A. I don't believe so.</p> <p>2 Q. Did you ever talk to Judy Johnson?</p> <p>3 A. I don't know who that is.</p> <p>4 Q. Another Assistant Hennepin County Attorney whose</p> <p>5 name has come up in this. Do you remember?</p> <p>6 A. I -- like I said, I don't know who that is so</p> <p>7 I --</p> <p>8 Q. That doesn't refresh your recollection?</p> <p>9 A. No.</p> <p>10 Q. Okay. When did you first speak with Marlene</p> <p>11 Senechal?</p> <p>12 A. I don't know.</p> <p>13 Q. Well, was it before the grand jury?</p> <p>14 A. Yes.</p> <p>15 Q. Did she... How much before you actually</p> <p>16 testified before the grand jury was it?</p> <p>17 A. I -- I don't know. Maybe a month.</p> <p>18 Q. Okay. Were you aware they waited for several</p> <p>19 grand juries to bring it before the one they</p> <p>20 did?</p> <p>21 A. No.</p> <p>22 Q. She didn't tell you that?</p> <p>23 A. No.</p> <p>24 Q. When did you go in front of the grand jury?</p> <p>25 What -- what --</p>

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<p style="text-align: right;">10</p> <p>1 A. September... This past September.</p> <p>2 Q. September of 2011?</p> <p>3 A. I believe so.</p> <p>4 Q. So a full year after the event?</p> <p>5 A. I -- yes.</p> <p>6 Q. Okay. Give or take a few days?</p> <p>7 A. Yeah.</p> <p>8 Q. Do you know Chief Dolan?</p> <p>9 A. He's my chief. I don't know him personally.</p> <p>10 Q. You've never worked with him?</p> <p>11 A. No.</p> <p>12 Q. Ever trained with him?</p> <p>13 A. We may have been in the same in-service training</p> <p>14 class, but I've -- no, I've never trained with</p> <p>15 him.</p> <p>16 Q. Are you friends with him?</p> <p>17 A. No.</p> <p>18 Q. Do you ever play -- ever on the hockey team?</p> <p>19 A. No.</p> <p>20 Q. You know he does that, don't you?</p> <p>21 A. I know he does -- or did play hockey.</p> <p>22 Q. Do you play sports in Stillwater?</p> <p>23 A. Do I? No.</p> <p>24 Q. Did you play sports in high school in</p> <p>25 Stillwater? Were you a football player, for</p>	<p style="text-align: right;">12</p> <p>1 A. No.</p> <p>2 Q. You've received, as a Minneapolis</p> <p>3 police officer, various training throughout your</p> <p>4 career; correct?</p> <p>5 A. Yes.</p> <p>6 Q. You received use-of-force training?</p> <p>7 A. Yes.</p> <p>8 Q. You've -- you understand that the use-of-force</p> <p>9 training is to mirror the protections of the --</p> <p>10 that are afforded under the 4th Amendment to the</p> <p>11 United States Constitution?</p> <p>12 A. Yes.</p> <p>13 Q. And the case law that surrounds that -- that</p> <p>14 amendment; for instance, Graham versus Connor?</p> <p>15 You're familiar with that case?</p> <p>16 A. No.</p> <p>17 Q. Okay. They teach you the case names, but -- and</p> <p>18 the principles in the cases in the use-of-force</p> <p>19 training, don't they?</p> <p>20 A. Yes.</p> <p>21 Q. But you don't always pick up on the case names?</p> <p>22 That's not important to you necessarily?</p> <p>23 A. Yes.</p> <p>24 Q. Is it fair to say that you're supposed to use</p> <p>25 the least amount of force necessary to</p>
<p style="text-align: right;">11</p> <p>1 example?</p> <p>2 A. No.</p> <p>3 Q. Okay. Showing you Exhibit 22. This is a</p> <p>4 document that was given to us.</p> <p>5 The... Do you know what... Do you know</p> <p>6 that the Civilian Review Authority sustained a</p> <p>7 complaint against you as to discretion or</p> <p>8 judgment as to a gentleman called "Ruben Flood"?</p> <p>9 A. (No response.)</p> <p>10 Q. Are you aware of that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you remember... That case involved a</p> <p>13 situation where a black man came to the precinct</p> <p>14 to ask for information on how to file a</p> <p>15 complaint against a MPD officer and it was</p> <p>16 alleged you failed to provide him with that</p> <p>17 information. Do you remember that?</p> <p>18 A. I remember that that is what was alleged.</p> <p>19 Q. Did the deputy chief actually conclude that a</p> <p>20 violation had occurred, but the -- that the</p> <p>21 incident occurred past the reckoning period for</p> <p>22 discipline to be imposed?</p> <p>23 A. I'm not sure.</p> <p>24 Q. Okay. You wouldn't deny that if the record</p> <p>25 reflects that?</p>	<p style="text-align: right;">13</p> <p>1 accomplish the legitimate police purpose you're</p> <p>2 engaged in?</p> <p>3 A. Yes.</p> <p>4 Q. And is it ever constitutionally acceptable to</p> <p>5 use force to punish a subject?</p> <p>6 A. I would say no.</p> <p>7 Q. Is it ever constitutionally acceptable to exact</p> <p>8 -- to use force to exact retribution from a</p> <p>9 subject?</p> <p>10 A. No.</p> <p>11 Q. Okay. And as a Minneapolis police officer</p> <p>12 you've had training where there have been a</p> <p>13 number of different kinds of trainers. There</p> <p>14 have been Minneapolis police officers, there</p> <p>15 have been Minneapolis city attorneys and there</p> <p>16 have been outside people; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And they go over the case law governing a</p> <p>19 particular topic, whether it's use of force, or</p> <p>20 use of deadly force, qualified immunity, Taser</p> <p>21 use, that sort of thing, don't they?</p> <p>22 A. Sometimes, I would say yes.</p> <p>23 Q. Okay. And you've been given training on certain</p> <p>24 tools or weapons that you can use when they're</p> <p>25 appropriate; correct?</p>

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<p style="text-align: right;">14</p> <p>1 A. Yes.</p> <p>2 Q. And they would include like chemical weapons</p> <p>3 such as the pepper spray?</p> <p>4 A. Yes.</p> <p>5 Q. Your Taser?</p> <p>6 A. Yes.</p> <p>7 Q. Your firearm?</p> <p>8 A. Yes.</p> <p>9 Q. And that's a -- what do you carry, a 40 caliber?</p> <p>10 A. What do I carry as a firearm?</p> <p>11 Q. Yeah.</p> <p>12 A. 9 millimeter.</p> <p>13 Q. Beretta?</p> <p>14 A. Beretta.</p> <p>15 Q. And you've also taken courses to be -- to</p> <p>16 experience and to be trained in M16 I thought I</p> <p>17 saw; is that right?</p> <p>18 A. Patrol rifle, yes.</p> <p>19 Q. Are you... How about a shotgun, too?</p> <p>20 A. Yes.</p> <p>21 Q. Have you ever been on SWAT?</p> <p>22 A. No.</p> <p>23 Q. And you've been given training on the other</p> <p>24 tools that you have that you use to restrain</p> <p>25 somebody, like your handcuffs; correct?</p>	<p style="text-align: right;">16</p> <p>1 Q. Yeah. And the -- you've -- you understand...</p> <p>2 Now maybe you don't remember it as a</p> <p>3 Graham-versus-Connor analysis, but in using the</p> <p>4 use of force there's a 3-prong test; correct?</p> <p>5 A. (No response.)</p> <p>6 Q. One is the severity of the -- the offense</p> <p>7 involved. You've been taught that?</p> <p>8 A. Ah... Can you start over again?</p> <p>9 Q. Okay. We're talking use-of-force analysis.</p> <p>10 A. Okay.</p> <p>11 Q. And usually it's the severity of the offense,</p> <p>12 that's the first thing; correct?</p> <p>13 A. Okay.</p> <p>14 Q. Well, is that -- that what you've been taught?</p> <p>15 A. I'm not sure that I received it in the way that</p> <p>16 you're phrasing it.</p> <p>17 Q. Okay. Well, how -- just tell me how you were</p> <p>18 taught.</p> <p>19 A. Well, okay. You're going to have to start</p> <p>20 over --</p> <p>21 Q. Tell --</p> <p>22 A. -- with your question.</p> <p>23 Q. -- me how you're supposed to analyze how and in</p> <p>24 what degree you can use force.</p> <p>25 A. Um... Hmm. I -- first -- one of the first</p>
<p style="text-align: right;">15</p> <p>1 A. Yes.</p> <p>2 Q. Would you characterize your handcuff as your</p> <p>3 primary tool of restraint?</p> <p>4 A. Yes.</p> <p>5 Q. And in the -- in my experience, I guess that</p> <p>6 doesn't matter so much, but let me ask you this:</p> <p>7 In your experience the -- when you're taking</p> <p>8 control of a subject and make a decision to</p> <p>9 restrain the subject or to take them into</p> <p>10 custody, him or her, your handcuffs are</p> <p>11 essentially your primary tool, aren't they?</p> <p>12 A. I would say yes.</p> <p>13 Q. Okay. And you do that because the handcuffs --</p> <p>14 once you get a person handcuffed you can control</p> <p>15 their movements more easily?</p> <p>16 A. I would -- more easily, yes.</p> <p>17 Q. Yeah, that doesn't say you can control all of</p> <p>18 their movements, but you have the ability to</p> <p>19 restrict the use of their arms; correct?</p> <p>20 A. Yes.</p> <p>21 Q. And if you pin the subject against a flat</p> <p>22 surface, whether it's a wall standing, whether</p> <p>23 it's the floor, whether it's a car, you can gain</p> <p>24 some control over their torso, as well; correct?</p> <p>25 A. Some control, yes.</p>	<p style="text-align: right;">17</p> <p>1 things might be officer safety. You need to</p> <p>2 handcuff someone who might be a suspect if you</p> <p>3 think -- you have reasonable suspicion that they</p> <p>4 might be carrying a weapon.</p> <p>5 Or the type of crime. If it was an assault</p> <p>6 or something, might be an indicator as to when</p> <p>7 you might handcuff someone.</p> <p>8 Q. Well, I'm not necessarily talking about</p> <p>9 handcuff. I'm talking about the use of force</p> <p>10 generally.</p> <p>11 A. Okay. Go ahead with your analysis.</p> <p>12 Q. I mean -- well, how do you -- how do you -- what</p> <p>13 are the steps you're supposed to do in analyzing</p> <p>14 what use of force is appropriate?</p> <p>15 A. Well, I don't -- I mean I think you're looking</p> <p>16 for a -- certain specific steps and I don't know</p> <p>17 that I can answer it that way.</p> <p>18 Q. Have you been taught that way?</p> <p>19 A. I -- I'm not sure. You're -- you're referencing</p> <p>20 this Graham versus Connor, but I'm not familiar.</p> <p>21 Q. Okay. You've never been taught Graham versus</p> <p>22 Connor or the Supreme Court's ruling on how</p> <p>23 force is to be analyzed?</p> <p>24 A. I --</p> <p>25 Q. Is that what you're saying?</p>

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<p style="text-align: right;">18</p> <p>1 A. -- may have. 2 I'm not able to recall it right now. 3 Q. Okay. Have you ever used plastic handcuffs? 4 A. On occasion, yes. 5 Q. How often? 6 A. Not very. 7 Q. In relationship to use of your regular metal 8 handcuffs would be -- 9 A. Very few times. 10 Q. Okay. How about hobbling, have you ever done 11 that? 12 A. Yes, I have. 13 Q. How many times? 14 A. Very few. 15 Q. Less than plastic handcuffs? 16 A. Yes. 17 Q. Okay. So that would be -- that would be even 18 further down the list in comparison to your use 19 of your metal handcuffs? 20 A. Yes. 21 Q. I'm showing you what's been marked as 22 Exhibit 23. That's your training records that 23 have been given to me in the course of the 24 truncated discovery that we've engaged in so 25 far.</p>	<p style="text-align: right;">20</p> <p>1 A. No. 2 Q. Okay. But whatever the EMS training was 3 provided in those 4 years you took it? 4 A. Yes. 5 Q. Do they give it as part of regular in-service 6 training, as well, on an annual basis? 7 A. Not on an annual basis. 8 Q. Okay. Were you taught in that training or any 9 training that you've had how to evaluate 10 distressed breathing? 11 A. I don't recall. 12 Q. And by "distressed breathing," by -- have you 13 been trained to determine what you're to do if 14 someone isn't breathing? 15 A. That would be CPR. 16 Q. How about somebody who's not breathing properly, 17 not obtaining sufficient oxygen? 18 A. Are you referring to like rescue breathing? 19 Q. Well, I suppose you could refer to a number of 20 different possibilities. Someone having a 21 severe asthma attack. Someone whose breathing 22 is compromised by something in their throat. It 23 could be a number of things. 24 I mean have you been trained how to deal 25 with or how to recognize that? Let's deal with</p>
<p style="text-align: right;">19</p> <p>1 Would this be true and correct to the best 2 of your knowledge and belief? 3 A. If you got it from the department, I would say 4 it's probably true and correct. 5 Q. Okay. So I can rely on it for purposes of 6 trying to understand what training you've 7 received? 8 A. I think you probably can. 9 Q. Okay. Now Exhibit 23 shows you've been -- 10 you've had training in CPR; correct? 11 A. Yes. 12 Q. And it shows you have EMS, which I would... 13 You tell me what "EMS" means. 14 A. Um, where... Are you referring to a specific -- 15 Q. Well, yeah. You had it in '94, '96, '98 and 16 '99. I would think that's Emergency Medical 17 Services. 18 A. That's very... If that's what you're referring 19 to, it's very basic. 20 Q. Okay. Is it First Responder training? 21 A. It's -- I think it's even less than that because 22 I don't think we're First Responders. 23 Q. Have you ever been an EMT? 24 A. No. 25 Q. Have you taken any medical courses on your own?</p>	<p style="text-align: right;">21</p> <p>1 the first thing, recognition. 2 Have you been taught how to recognize those 3 things if someone is not breathing correctly? 4 A. We've been taught how to recognize if somebody 5 is not breathing, period. But I don't know 6 about the -- 7 Q. Okay. 8 A. -- breathing distress. 9 Q. Have you ever heard the term "death rattle"? 10 A. Yes. 11 Q. Have you ever observed a death rattle 12 personally? 13 A. Um... I don't know. 14 Q. How many people have you seen die or in a 15 condition you thought was dead? 16 MS. FUNDINGSLAND: Can we get some 17 foundation on that as to place? 18 MR. BENNETT: Well, I don't know. 19 We'll -- it could be a number -- I've seen them 20 in a number of places. I imagine you've seen 21 them in a number of places, too. I'd like to 22 cover the whole waterfront. 23 THE WITNESS: I have seen people die. 24 MR. BENNETT: Okay. 25 BY MR. BENNETT:</p>

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<p style="text-align: right;">22</p> <p>1 Q. In car accidents?</p> <p>2 A. Ah... I don't -- I don't know --</p> <p>3 Q. Okay.</p> <p>4 A. -- about a car accident.</p> <p>5 Q. You don't? Okay. In your personal life have</p> <p>6 you seen people die?</p> <p>7 A. No.</p> <p>8 Q. Okay. Now have you seen people die in your</p> <p>9 professional life?</p> <p>10 A. Yes.</p> <p>11 Q. Is that what you're referring to?</p> <p>12 A. Yes.</p> <p>13 Q. Is it solely in your professional life?</p> <p>14 A. To the best of my recollection, yes.</p> <p>15 Q. Okay. And -- and how many people have you seen</p> <p>16 die, --</p> <p>17 A. I don't know.</p> <p>18 Q. -- or what you thought was dead?</p> <p>19 A. People when I arrived at the scene that were</p> <p>20 already dead?</p> <p>21 Q. Already. Or who died at the scene while you</p> <p>22 were there.</p> <p>23 A. Less than 10.</p> <p>24 Q. What kinds of death were these that you recall?</p> <p>25 A. Trauma deaths for the most part, I would say.</p>	<p style="text-align: right;">24</p> <p>1 Q. Okay. How many arrests do you figure you make</p> <p>2 on an annual basis?</p> <p>3 A. Over a hundred probably.</p> <p>4 Q. Okay. And on those a hundred arrests how many</p> <p>5 would you actually handcuff? All of them?</p> <p>6 A. Depends on if they went to jail.</p> <p>7 Q. Okay. So you could do -- make an arrest and</p> <p>8 give someone a citation and let them go?</p> <p>9 A. Yes.</p> <p>10 Q. How many times do you think you take someone to</p> <p>11 jail on an annual basis?</p> <p>12 A. Thirty.</p> <p>13 Q. Okay.</p> <p>14 A. Maybe.</p> <p>15 Q. Is it important to you that the person that you</p> <p>16 arrest and restrain continue to breathe?</p> <p>17 A. Yes.</p> <p>18 Q. Is it basic police training to ensure that the</p> <p>19 person that you arrest, restrain, or take</p> <p>20 control of continues to breathe?</p> <p>21 A. I'm sorry?</p> <p>22 Q. Is it basic police training to ensure that the</p> <p>23 person you arrest, restrain, or take control of</p> <p>24 continues to breathe?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">23</p> <p>1 Q. Okay. And what kind of trauma? Gunshot wounds?</p> <p>2 A. Yes.</p> <p>3 Q. How many gunshot wounds of the number of people</p> <p>4 that you've seen?</p> <p>5 A. Um... Less than five.</p> <p>6 Q. What other kinds of trauma?</p> <p>7 A. Blunt force trauma.</p> <p>8 Q. And what can you tell me about those?</p> <p>9 A. Just some sort of assault with an object I would</p> <p>10 say probably.</p> <p>11 Q. Okay. How many of those have you seen?</p> <p>12 A. A few. I don't know.</p> <p>13 Q. Okay. Any others?</p> <p>14 A. I mean I haven't -- I think what you -- are you</p> <p>15 asking me if I saw them actually expire or if</p> <p>16 they were expired?</p> <p>17 Q. Well, how many did you see actually expire?</p> <p>18 A. Very few. A handful. Two or three maybe.</p> <p>19 Q. Did you ever see the breathing at the end?</p> <p>20 A. I -- I don't know. I wasn't the only one there.</p> <p>21 I was probably in the background while medical</p> <p>22 personnel worked.</p> <p>23 Q. Okay. Have you ever seen -- heard a death</p> <p>24 rattle before?</p> <p>25 A. I... I don't know. I don't...</p>	<p style="text-align: right;">25</p> <p>1 Q. Is it basic EMS training to ensure that the</p> <p>2 person that you're dealing with, in whatever</p> <p>3 capacity you come upon them, continues to</p> <p>4 breathe?</p> <p>5 A. I would assume that that would be basic EMS</p> <p>6 training.</p> <p>7 Q. Would you agree that once you have seized a</p> <p>8 person within the meaning of the</p> <p>9 4th Amendment...</p> <p>10 Do you know what that means?</p> <p>11 A. Uh-huh.</p> <p>12 Q. That you continue to be responsible for that</p> <p>13 seizure and the person you've seized?</p> <p>14 A. Yes.</p> <p>15 Q. I mean you -- you -- and you understand that</p> <p>16 you're responsible for the reasonability of the</p> <p>17 seizure throughout the course of the seizure?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And you'd agree with me that breathing is</p> <p>20 needed to sustain life; correct?</p> <p>21 A. Yes.</p> <p>22 Q. Have you been taught in your EMS training, or do</p> <p>23 you know otherwise, that if the brain is</p> <p>24 deprived of oxygen for something like 4 minutes</p> <p>25 it may never come back?</p>

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<p style="text-align: right;">26</p> <p>1 A. Yes.</p> <p>2 Q. Okay. So the first 4 minutes that you're</p> <p>3 dealing with a person not breathing are the most</p> <p>4 important to continued brain activity?</p> <p>5 A. Not being a doctor, I would say yes.</p> <p>6 Q. I mean what I'm asking is, is that your lay</p> <p>7 understanding as a person who may come across...</p> <p>8 I mean as a police officer you come across</p> <p>9 people who are hurt?</p> <p>10 A. Uh-huh.</p> <p>11 Q. You have to hurt people sometimes yourselves?</p> <p>12 A. Well...</p> <p>13 Q. You --</p> <p>14 A. Okay.</p> <p>15 Q. You have to use force on them?</p> <p>16 A. Okay. Yes.</p> <p>17 Q. And that may hurt them?</p> <p>18 A. Yes.</p> <p>19 Q. I'm not saying -- I'm not implying any intent.</p> <p>20 As part of your job you may have to do</p> <p>21 things that injure people?</p> <p>22 A. Yes.</p> <p>23 Q. And to prevent them from injuring others, to</p> <p>24 prevent them from injuring you, but -- and --</p> <p>25 and to take them into custody?</p>	<p style="text-align: right;">28</p> <p>1 persons you take control of?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And that's part of basic use-of-force</p> <p>4 training and basic police training?</p> <p>5 A. Yes.</p> <p>6 Q. And you've been an officer -- is this your 19th</p> <p>7 year?</p> <p>8 A. Yes.</p> <p>9 Q. When you started you didn't think -- there</p> <p>10 weren't pen cameras necessarily, were there?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. And there were a lot less cameras that covered</p> <p>13 the city streets --</p> <p>14 A. Yes.</p> <p>15 Q. -- and buildings?</p> <p>16 A. Yes.</p> <p>17 Q. And -- and when you first got a Taser did it</p> <p>18 have a camera?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. You're aware that the earlier editions of</p> <p>21 the Taser had no cameras?</p> <p>22 A. Yes.</p> <p>23 Q. All right. So this videoing conduct is sort of</p> <p>24 a new phenomenon or recent phenomenon?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">27</p> <p>1 A. That's correct.</p> <p>2 Q. Okay. But even the persons that you use force</p> <p>3 on and -- and you understand that you're</p> <p>4 responsible for their well-being once that force</p> <p>5 is implemented and the person taken into</p> <p>6 custody?</p> <p>7 A. I'm sorry. What?</p> <p>8 Q. Okay. You understand that once you decide to</p> <p>9 use force, --</p> <p>10 A. Yes.</p> <p>11 Q. -- to implement the force, that you're</p> <p>12 responsible for that person that you've taken</p> <p>13 into custody?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And usually you're mainly responsible for</p> <p>16 them until you turn them over to someone else,</p> <p>17 whether it be the Hennepin County Sheriff's</p> <p>18 Department at the sally port. Whether it be</p> <p>19 HCMC if they've been hurt, but usually you have</p> <p>20 to stay with them then, I think. Or in the case</p> <p>21 of this, where you turn them over to emergency</p> <p>22 medical people; correct?</p> <p>23 A. Yes.</p> <p>24 Q. All right. But until you turn them over they're</p> <p>25 yours to deal with and your responsibility, the</p>	<p style="text-align: right;">29</p> <p>1 Q. Okay. Now do you have your pen camera with you</p> <p>2 today?</p> <p>3 A. No.</p> <p>4 Q. That's just a regular pen?</p> <p>5 A. That's just a regular pen.</p> <p>6 Q. I just wanted to know if I was on camera.</p> <p>7 A. No, no.</p> <p>8 MR. OSBORNE: You are on many cameras.</p> <p>9 MR. BENNETT: I am on many cameras, but</p> <p>10 not that one.</p> <p>11 THE WITNESS: No.</p> <p>12 BY MR. BENNETT:</p> <p>13 Q. Did you happen to bring that today, the pen</p> <p>14 camera?</p> <p>15 A. No.</p> <p>16 Q. What does it look like?</p> <p>17 A. It looks like this, but it's a little thicker.</p> <p>18 Q. Okay.</p> <p>19 A. A little bit wider.</p> <p>20 Q. That's why I asked.</p> <p>21 How does your pen camera work?</p> <p>22 A. It has a button on the top and you just press it</p> <p>23 and it turns on.</p> <p>24 Q. Did the -- did you activate the pen camera in</p> <p>25 the -- in your interaction with Mr. Smith?</p>

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<p style="text-align: right;">30</p> <p>1 A. Yes.</p> <p>2 Q. Why did you decide to do that?</p> <p>3 A. Because it was turning into a -- a situation</p> <p>4 that I thought it might be helpful.</p> <p>5 Q. And how many times had you done that before?</p> <p>6 A. Have I ever used it?</p> <p>7 Q. Yeah.</p> <p>8 A. I don't know.</p> <p>9 Q. I mean was this the first time?</p> <p>10 A. No.</p> <p>11 Q. Was it the first time that you had to turn your</p> <p>12 pen camera into the -- into the department, the</p> <p>13 video of it?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Had you ever... How did you download</p> <p>16 this particular pen camera?</p> <p>17 A. Just -- it comes apart in two. And there's a</p> <p>18 USB port and you just plug it in and it</p> <p>19 downloads.</p> <p>20 Q. So with regard to the video we all now have</p> <p>21 seen, how did it come about that that came to</p> <p>22 exist? You hit the camera? Then did someone</p> <p>23 take control of the pen camera from you at the</p> <p>24 scene?</p> <p>25 A. No.</p>	<p style="text-align: right;">32</p> <p>1 Q. When did you first watch it?</p> <p>2 A. After I got home.</p> <p>3 Q. So it was -- what time did you get home?</p> <p>4 A. I don't remember.</p> <p>5 Q. What were you supposed to work that day? What</p> <p>6 was your normal shift?</p> <p>7 A. 6:30 A.M. to 4:30 P.M.</p> <p>8 Q. Did you watch it with anybody?</p> <p>9 A. No.</p> <p>10 Q. Now you had this discussion with your wife.</p> <p>11 A. Uh-huh.</p> <p>12 Q. How long have you been married?</p> <p>13 A. We've been together for quite a while. We've</p> <p>14 been married since 2002.</p> <p>15 Q. Okay. That conversation that you had with her</p> <p>16 was probably a memorable conversation for her, I</p> <p>17 would guess.</p> <p>18 A. Probably.</p> <p>19 Q. Did she ever tell you it was?</p> <p>20 A. Um... No.</p> <p>21 Q. Did -- it seemed -- at least seems to me to be</p> <p>22 the kind of conversation that engenders a</p> <p>23 discussion when you get through the door. Did</p> <p>24 it?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">31</p> <p>1 Q. Did you tell anybody at the scene that you had a</p> <p>2 pen camera?</p> <p>3 A. I don't recall. I don't think so.</p> <p>4 Q. Well, so then you took -- did you go home with</p> <p>5 the pen camera?</p> <p>6 A. Yes.</p> <p>7 Q. Did... What did you do with it?</p> <p>8 A. I downloaded it.</p> <p>9 Q. So you went to your personal computer. Is that</p> <p>10 right?</p> <p>11 A. (Pausing.)</p> <p>12 Q. I mean how would you download? Explain what you</p> <p>13 did.</p> <p>14 A. Well, the only way to view it is to put it on --</p> <p>15 plug it into something and then you can view it</p> <p>16 and then you can transfer it to a more portable</p> <p>17 device.</p> <p>18 Q. Okay. So you... So what did you do when you...</p> <p>19 Did you download it onto your personal</p> <p>20 computer at home?</p> <p>21 A. My laptop, I think.</p> <p>22 Q. Okay. And is that your personal computer?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Did you watch it?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">33</p> <p>1 Q. Did -- did you tell her about the pen camera?</p> <p>2 A. Yes.</p> <p>3 Q. Did she ask to see it?</p> <p>4 A. She may have been there standing behind me when</p> <p>5 I watched it. I don't -- I -- I'm not sure.</p> <p>6 Q. What does your wife do? Is she a</p> <p>7 police officer, --</p> <p>8 A. No.</p> <p>9 Q. -- by any chance?</p> <p>10 Is she employed outside the home?</p> <p>11 A. A part-time job.</p> <p>12 Q. Is she in health care at all?</p> <p>13 A. No.</p> <p>14 Q. Okay. Would she have been the first person you</p> <p>15 showed it to other than yourself?</p> <p>16 A. She -- yes.</p> <p>17 Q. Okay. Did she ask you any questions about it?</p> <p>18 A. I'm sure she did.</p> <p>19 Q. Did anyone ever tell you that you ought to throw</p> <p>20 your pen camera away?</p> <p>21 A. No.</p> <p>22 Q. Okay. You talked with the -- is it Sergeant</p> <p>23 Mercil at the -- at the scene?</p> <p>24 A. Yes. He was the sergeant that responded.</p> <p>25 Q. Did you tell Mercil about the pen camera?</p>

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<p style="text-align: right;">34</p> <p>1 A. I don't think so.</p> <p>2 Q. Going back to your interrogatories. Did you</p> <p>3 talk -- it says you talked to Lieutenant Matthew</p> <p>4 Clark briefly at the scene.</p> <p>5 MR. BENNETT: And his is Supplement 1,</p> <p>6 Jeff. Maybe we should look at that.</p> <p>7 BY MR. BENNETT:</p> <p>8 Q. Did you tell Lieutenant Clark about the</p> <p>9 pen camera?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Why didn't you tell Sergeant Mercil or</p> <p>12 Lieutenant Clark about the pen camera?</p> <p>13 A. I don't know. I wasn't really thinking about</p> <p>14 it.</p> <p>15 Q. Well, you had the presence of mind to start it?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is that a -- you have to --</p> <p>18 A. Yes.</p> <p>19 Q. I understood you to say "Yes."</p> <p>20 A. Yes.</p> <p>21 Q. Did you talk to Officer Kingdon at the scene, as</p> <p>22 well?</p> <p>23 A. Yes.</p> <p>24 Q. Is he a friend of yours?</p> <p>25 A. He -- he works in the same precinct. He works a</p>	<p style="text-align: right;">36</p> <p>1 Q. Well, it was focused right on your leg and --</p> <p>2 and on -- and Officer Gorman and on part of the</p> <p>3 torso of Mr. Smith. Do you remember seeing that</p> <p>4 Taser video?</p> <p>5 A. Yes.</p> <p>6 Q. At some point the video -- the Taser is -- it</p> <p>7 appears to be several feet away from you. And</p> <p>8 that's correct, wasn't it?</p> <p>9 A. I don't know how far away it was, but it wasn't</p> <p>10 in my hand.</p> <p>11 Q. Well, do you remember the -- going -- spinning</p> <p>12 off at some point?</p> <p>13 A. It -- it may have. I don't know.</p> <p>14 Q. Did you knock it away?</p> <p>15 A. I don't recall doing it -- you know, on purpose,</p> <p>16 if that's what you're asking.</p> <p>17 Q. Okay. Did you... Did you say anything to your</p> <p>18 wife about the video when you were watching it?</p> <p>19 A. Which video?</p> <p>20 Q. The pen camera.</p> <p>21 A. What do you mean did I say anything to her?</p> <p>22 Q. Did you say anything to her while you were</p> <p>23 watching the video that you downloaded on your</p> <p>24 computer?</p> <p>25 A. I -- I'm sure.</p>
<p style="text-align: right;">35</p> <p>1 different shift right now.</p> <p>2 Q. I mean you're... Did you tell him about the</p> <p>3 pen camera?</p> <p>4 A. No.</p> <p>5 Q. Now you did tell your partner, Officer Gorman,</p> <p>6 about the pen camera during the event, didn't</p> <p>7 you?</p> <p>8 A. Yes.</p> <p>9 Q. And in fact you on the tape point to your</p> <p>10 pen camera at one point on the -- on the video;</p> <p>11 correct?</p> <p>12 A. I think so.</p> <p>13 Q. So you -- you had an awareness, even as the --</p> <p>14 as you were interacting with Mr. Smith, that you</p> <p>15 were recording the video evidence of it;</p> <p>16 correct?</p> <p>17 A. Yes.</p> <p>18 Q. All right. You also had an awareness that the</p> <p>19 Taser was videoing it, didn't you?</p> <p>20 A. Yes.</p> <p>21 Q. At some point in the video you knocked the Taser</p> <p>22 away; correct?</p> <p>23 A. I don't know.</p> <p>24 Q. Do you remember doing that?</p> <p>25 A. I don't know what you mean by "knocked it away."</p>	<p style="text-align: right;">37</p> <p>1 Q. Well, do you remember --</p> <p>2 A. But I don't know --</p> <p>3 Q. -- saying anything?</p> <p>4 A. -- what.</p> <p>5 (Shaking head.)</p> <p>6 Q. Do you remember her saying anything back to you?</p> <p>7 A. She was concerned for me.</p> <p>8 Q. And what did she say?</p> <p>9 A. I -- I don't know.</p> <p>10 Q. Okay. Based on your training and understanding</p> <p>11 of department policies, your EMS training, did</p> <p>12 the video give you any understanding of why it</p> <p>13 was that David Smith died after your and</p> <p>14 Gorman's interaction with him?</p> <p>15 A. No.</p> <p>16 Q. Okay. I show you what's...</p> <p>17 Showing you what's been marked as</p> <p>18 Exhibit 24.</p> <p>19 MR. BENNETT: Give a copy to...</p> <p>20 MS. BENNETT: (Distributing copies of</p> <p>21 Exhibit 24.)</p> <p>22 BY MR. BENNETT:</p> <p>23 Q. Do you recognize this?</p> <p>24 A. It appears to be a photocopy of our department</p> <p>25 manual.</p>

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<p style="text-align: right;">38</p> <p>1 Q. And it's section -- it's just part of the</p> <p>2 manual; correct? The manual is much more</p> <p>3 voluminous, it covers much more ground than this</p> <p>4 does; correct?</p> <p>5 A. Yes.</p> <p>6 Q. This covers "9-100 Adult Arrests"; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And in the -- um... In the...</p> <p>9 A. Excuse me.</p> <p>10 Q. The policy at one point talks about -- in</p> <p>11 9-111.01 that deals with Maximal Restraint of</p> <p>12 Prisoners?</p> <p>13 A. What page are you on, please?</p> <p>14 Q. I am on page 5 of 9, Officer.</p> <p>15 A. Okay.</p> <p>16 Q. And that deals with securing prisoners; correct?</p> <p>17 A. It does.</p> <p>18 Q. And it deals with securing subjects who are not</p> <p>19 adequately controlled by handcuffing alone?</p> <p>20 A. Yes.</p> <p>21 Q. And that would cover David Cornelius Smith at</p> <p>22 least for the beginning of his time after he was</p> <p>23 handcuffed; correct?</p> <p>24 A. (No response.)</p> <p>25 Q. Is that -- at least that's what -- is that what</p>	<p style="text-align: right;">40</p> <p>1 if you're just walking along with them they are</p> <p>2 -- they have an ability to do certain things;</p> <p>3 right?</p> <p>4 A. Sure.</p> <p>5 Q. They have less of an ability when you have them</p> <p>6 positioned against a surface, whether it's a</p> <p>7 floor, a wall, or a car; correct?</p> <p>8 A. Okay.</p> <p>9 Q. Do you agree with that?</p> <p>10 A. I would -- yes.</p> <p>11 Q. All right. And they have -- the most</p> <p>12 restraining of that would be a prone restraint,</p> <p>13 where they're lying prone on their chest on a</p> <p>14 hard surface, like the hardwood basketball court</p> <p>15 of the YMCA; correct?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And that's called a prone restraint</p> <p>18 position? Do you understand what that position</p> <p>19 is?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And this policy says that, "When ANY..."</p> <p>22 And "ANY" is in bold and in caps; correct?</p> <p>23 A. It is.</p> <p>24 Q. When it says, "...ANY restraint technique is</p> <p>25 used on a subject..."</p>
<p style="text-align: right;">39</p> <p>1 you're asserting?</p> <p>2 A. Can you -- I'm sorry. Can you say that again?</p> <p>3 Q. Well, was David Smith a subject who was not</p> <p>4 adequately controlled by handcuffing?</p> <p>5 A. No. I would say that once we had him handcuffed</p> <p>6 we had him --</p> <p>7 Q. Adequately controlled?</p> <p>8 A. I -- I -- I think so.</p> <p>9 Q. Okay. The handcuffing itself is certainly a</p> <p>10 restraint?</p> <p>11 A. Is what now?</p> <p>12 Q. Handcuffing itself is a restraint? You're</p> <p>13 taught that; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And it's even more of a restraint when you have</p> <p>16 a person in a position where they are against an</p> <p>17 object, whether it be a floor, a wall or a car?</p> <p>18 Correct?</p> <p>19 A. You have to say it again. I'm sorry.</p> <p>20 Q. Have you heard of the -- do you know what</p> <p>21 "decentralization" is?</p> <p>22 A. No.</p> <p>23 Q. Never heard of that term?</p> <p>24 A. I don't think so.</p> <p>25 Q. Okay. Well, when you have someone handcuffed,</p>	<p style="text-align: right;">41</p> <p>1 That includes handcuffing; correct?</p> <p>2 A. Well, I think it's -- I think it's in addition</p> <p>3 to handcuffing, is the way that it reads.</p> <p>4 Q. Well, it says, "When ANY..." And "ANY" is in</p> <p>5 bold?</p> <p>6 A. But at the top it says, "To secure subjects who</p> <p>7 are not adequately controlled by handcuffing."</p> <p>8 Q. Okay. Well, let's read the whole sentence. It</p> <p>9 says, "When ANY restraint technique is used on a</p> <p>10 subject, the subject shall not be left in a</p> <p>11 prone position and shall be placed on their side</p> <p>12 as soon as they are secured." Correct?</p> <p>13 A. Well, but prior to that it says, "Techniques</p> <p>14 that secure the subject's feet to their</p> <p>15 handcuffed hands behind the back shall be a last</p> <p>16 resort technique."</p> <p>17 Q. Well, --</p> <p>18 A. "A supervisor shall be called to the scene where</p> <p>19 a subject has been restrained in this manner to</p> <p>20 evaluate the method of transportation. When ANY</p> <p>21 restraint technique is used on a subject, the</p> <p>22 subject shall not be left in a prone</p> <p>23 position..."</p> <p>24 I read it as max -- the -- the -- what</p> <p>25 you're referring to is titled, "Maximal</p>

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<p style="text-align: right;">42</p> <p>1 Restraint of Prisoners" and it's referring to</p> <p>2 hobbling. That's what -- that's what we call</p> <p>3 maximal --</p> <p>4 Q. Well, --</p> <p>5 A. -- restraint.</p> <p>6 Q. -- I'm not the one who decided to bold and put</p> <p>7 "ANY" in caps; right?</p> <p>8 MS. FUNDINGSLAND: Objection,</p> <p>9 argumentative.</p> <p>10 BY MR. BENNETT:</p> <p>11 Q. It says, "When ANY restraint technique is</p> <p>12 used..." Correct?</p> <p>13 A. It does say that.</p> <p>14 Q. Can we agree that handcuffing is a restraint</p> <p>15 technique?</p> <p>16 A. We can agree that handcuffing is a restraint</p> <p>17 technique.</p> <p>18 Q. All right. That was used on David Smith?</p> <p>19 A. Yes, it was.</p> <p>20 Q. And David Smith was left in a prone position for</p> <p>21 a prolonged period of time, wasn't he?</p> <p>22 A. He was. And again you're taking it -- that is</p> <p>23 not what -- where you're reading from is not</p> <p>24 referring to --</p> <p>25 Q. Well, --</p>	<p style="text-align: right;">44</p> <p>1 wearing one or use other variations that do not</p> <p>2 tie the feet of the subject directly to their</p> <p>3 hands behind their back."</p> <p>4 Q. Well, let me ask you this: Whenever you take a</p> <p>5 person into custody, correct, and you handcuff</p> <p>6 them, --</p> <p>7 A. Yes.</p> <p>8 Q. -- should you watch for the following signs:</p> <p>9 Significant change in behavior or level of</p> <p>10 consciousness?</p> <p>11 A. Do we have to consciously...</p> <p>12 Q. Well, you know, we went through this before. I</p> <p>13 talked about it in any arrest, any 4th Amendment</p> <p>14 situation. And -- and I'm saying here the...</p> <p>15 Are you saying that only if you hobble</p> <p>16 somebody do you pay attention to those following</p> <p>17 signs? Is that what you're saying?</p> <p>18 A. I'm -- if using maximal restraint then it says</p> <p>19 here that you -- you need to watch for</p> <p>20 significant change in behavior or level [of]</p> <p>21 consciousness, shortness of breath or irregular</p> <p>22 breathing, seizures or convulsions, complaints</p> <p>23 of serious pain or injury and any other serious</p> <p>24 medical problems.</p> <p>25 Q. Well... But you have to do that with regard to</p>
<p style="text-align: right;">43</p> <p>1 A. -- handcuffing.</p> <p>2 Q. -- I guess others will decide that.</p> <p>3 The... It doesn't say, "When a person is</p> <p>4 restrained and hobbled"; correct?</p> <p>5 A. It does say that. It's "Maximal" --</p> <p>6 Q. No, no.</p> <p>7 A. -- "Restraint of Prisoners" is what you're</p> <p>8 reading from.</p> <p>9 Q. I know. I understand that. But the clause says</p> <p>10 -- it doesn't say when...</p> <p>11 And we can -- we'll have this discussion, I</p> <p>12 suppose, with the judge. But it doesn't say,</p> <p>13 "When the person is hobbled the subject shall</p> <p>14 not be left in a prone position" --</p> <p>15 A. It --</p> <p>16 Q. -- "and shall be placed on their side" --</p> <p>17 A. The middle paragraph says, the "Maximal</p> <p>18 Restraint Technique," which is what we're</p> <p>19 referring to, 9-11.01 [sic], "is accomplished by</p> <p>20 placing a cord cuff or hobble restraint around</p> <p>21 the waist of the subject and securing the bound</p> <p>22 feet to the subject -- of the subject to the</p> <p>23 cord cuff in front of the subject. Officers may</p> <p>24 also secure the bound feet of the subjects</p> <p>25 [sic] -- to the subject's belt if they are</p>	<p style="text-align: right;">45</p> <p>1 everybody you take into custody, don't you?</p> <p>2 A. I wouldn't consciously monitor that. If</p> <p>3 somebody collapsed over in my backseat just from</p> <p>4 being handcuffed, then I would be aware that</p> <p>5 they've collapsed over in my backseat and I</p> <p>6 would want to make sure that they're okay.</p> <p>7 Q. Well... But just take this sentence. "Once [a]</p> <p>8 subject is secure, an officer shall watch for</p> <p>9 any of the following signs: Significant change</p> <p>10 in behavior or level of consciousness.</p> <p>11 Shortness of breath or irregular breathing.</p> <p>12 Seizure or convulsions. Complaints of serious</p> <p>13 pain or injury. And/or any other serious</p> <p>14 medical problem."</p> <p>15 Do you disagree with that?</p> <p>16 A. No. If I was using a maximal restraint I would</p> <p>17 definitely --</p> <p>18 Q. How about just a regular handcuffing? Would you</p> <p>19 pay attention to that?</p> <p>20 A. I'm not sure what -- what you mean. I mean most</p> <p>21 -- most of the time people are talking to you</p> <p>22 and there's no -- you're not consciously</p> <p>23 monitoring their breathing.</p> <p>24 Q. How big are you?</p> <p>25 A. How tall am I?</p>

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<p style="text-align: right;">46</p> <p>1 Q. Yeah.</p> <p>2 A. I'm 6 foot 5.</p> <p>3 Q. What do you weigh?</p> <p>4 A. I weigh approximately 215 pounds.</p> <p>5 Q. And did you weigh 215 on September 9th of 2010?</p> <p>6 A. Give or take two or three pounds, yes.</p> <p>7 Q. Okay. You were sitting straddling Mr. Smith</p> <p>8 after he was handcuffed; correct?</p> <p>9 A. That's correct.</p> <p>10 Q. And you were -- you were sitting on him at least</p> <p>11 for more than -- I would think 5-1/2 minutes;</p> <p>12 correct?</p> <p>13 A. I don't know.</p> <p>14 Q. Well, have you read the timeline of events</p> <p>15 prepared by the MPD from your pen camera video?</p> <p>16 A. I have not. Is that what you're looking at?</p> <p>17 Q. Yeah.</p> <p>18 A. I have not seen that.</p> <p>19 Q. Okay. Well, you watched the tape how many</p> <p>20 times?</p> <p>21 A. I don't know.</p> <p>22 Q. Do you know if you were sitting straddling him?</p> <p>23 A. I was sitting on his --</p> <p>24 Q. For a period of more than 5-1/2 minutes?</p> <p>25 A. I don't know exactly how many minutes.</p>	<p style="text-align: right;">48</p> <p>1 Q. And your line of sight is much broader than the</p> <p>2 pen camera video we see; correct?</p> <p>3 A. Probably.</p> <p>4 Q. Well, you were straddling -- you had your left</p> <p>5 knee over the upper thigh/buttock area of Smith;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. Or left -- left leg.</p> <p>9 And right leg over his right buttock, right</p> <p>10 side; correct?</p> <p>11 A. (No response.)</p> <p>12 Q. You were straddling him?</p> <p>13 A. Yes.</p> <p>14 Q. And in front of you was Gorman and Smith?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Both of them were in your field of</p> <p>17 vision?</p> <p>18 A. Probably.</p> <p>19 Q. You were talking --</p> <p>20 A. Yes, --</p> <p>21 Q. -- to him.</p> <p>22 A. -- I know, but I can't tell you if I was looking</p> <p>23 at him the entire time.</p> <p>24 Q. Okay. What were you looking at?</p> <p>25 A. Well, I don't know. I may have -- I may have</p>
<p style="text-align: right;">47</p> <p>1 Q. Would you disagree with that?</p> <p>2 A. No.</p> <p>3 Q. All right. And Gorman, Officer Gorman was</p> <p>4 also... At the time you were on Mr. Smith he</p> <p>5 was on the upper back of Mr. Smith, correct,</p> <p>6 with one or both knees?</p> <p>7 A. He may have been.</p> <p>8 Q. Well, doesn't the videotape depict that?</p> <p>9 A. I don't know if it was -- what -- can you</p> <p>10 clarify your question?</p> <p>11 Q. Well, he was -- from the time immediately prior</p> <p>12 to the handcuffing completion, through at</p> <p>13 least... Um... The... For a period of at least</p> <p>14 4 minutes, Gorman's right knee, left knee or</p> <p>15 both knees was on -- between the scapulas of</p> <p>16 David Cornelius Smith?</p> <p>17 A. I don't know.</p> <p>18 Q. Okay. During that period of time did -- did</p> <p>19 Gorman ever take all of his weight off of Smith?</p> <p>20 A. Again, I can't -- I don't know if he -- I don't</p> <p>21 know.</p> <p>22 Q. He was right in front of you, wasn't he?</p> <p>23 A. Yes.</p> <p>24 Q. He was in your line of sight?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">49</p> <p>1 been looking around me. I may have looked to</p> <p>2 the left, to the right. I can't tell you that</p> <p>3 I -- I wasn't locked eyes with Officer Gorman</p> <p>4 the whole time the incident was...</p> <p>5 Q. You saw -- you would have applied weight to the</p> <p>6 lower torso and upper leg of Mr. Smith; correct?</p> <p>7 A. Yes.</p> <p>8 Q. And Officer Gorman applied weight between his</p> <p>9 shoulder blades; correct?</p> <p>10 A. Officer Gorman was on the upper part -- portion</p> <p>11 of his body. He was in that area.</p> <p>12 I was in the lower body area.</p> <p>13 Q. Okay. Well, anybody that you arrest and are</p> <p>14 taking into custody, you have to be concerned</p> <p>15 about any significant change in behavior or</p> <p>16 level of consciousness; correct?</p> <p>17 A. People's behaviors change all the time.</p> <p>18 Q. Level of consciousness, you have to pay</p> <p>19 attention to that?</p> <p>20 A. Yes.</p> <p>21 Q. You don't want to have one of the people who you</p> <p>22 arrest while they were conscious become</p> <p>23 unconscious, do you?</p> <p>24 A. Would I want that?</p> <p>25 Q. Correct. And you certainly wouldn't want it to</p>

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<p>1 be a product of activities that you conducted;</p> <p>2 correct?</p> <p>3 A. (No response.)</p> <p>4 Q. You don't want to render somebody unconscious,</p> <p>5 do you?</p> <p>6 A. No.</p> <p>7 Q. Okay. And you would want -- you would want to</p> <p>8 be vigilant and mindful of any shortness of</p> <p>9 breath or irregular breathing or stoppage of</p> <p>10 breathing of a person you're arresting; correct?</p> <p>11 A. Say it again, please.</p> <p>12 Q. You'd want to be aware of the shortness of</p> <p>13 breath of a person you're arresting; correct?</p> <p>14 A. Yes.</p> <p>15 Q. If they were breathing irregularly; correct?</p> <p>16 A. If they had been breathing irregularly, yes.</p> <p>17 Q. And if -- or if they stopped breathing that</p> <p>18 would be very important to know and to notice;</p> <p>19 correct?</p> <p>20 A. Yes.</p> <p>21 Q. All right. If a person had a seizure or a</p> <p>22 convulsion you'd want to note that and deal with</p> <p>23 it; correct?</p> <p>24 A. Yes.</p> <p>25 Q. If a person had complaints of a serious pain or</p>	<p>1 Q. You didn't -- you didn't need to be trained to</p> <p>2 look out for those health issues? You don't</p> <p>3 need this maximal restraint policy to understand</p> <p>4 that you need to do that, do you?</p> <p>5 A. No.</p> <p>6 Q. It's what a reasonable officer would do in the</p> <p>7 circumstances, isn't it?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So what did you... Did you put...</p> <p>10 You downloaded the pen camera onto your</p> <p>11 computer; correct?</p> <p>12 MS. FUNDINGSLAND: Objection, asked and</p> <p>13 answered.</p> <p>14 BY MR. BENNETT:</p> <p>15 Q. Well, you did --</p> <p>16 A. I -- yes.</p> <p>17 Q. Well, did you do anything to take it off your</p> <p>18 computer and put it on some other device?</p> <p>19 A. I put it onto a flash drive to give to</p> <p>20 investigators.</p> <p>21 Q. Okay. In fact, did you give it to the</p> <p>22 investigators or did you give it to your</p> <p>23 attorney?</p> <p>24 A. I gave it to my attorney.</p> <p>25 Q. Okay. When did you give it to your attorney?</p>
51	53
<p>1 injury... For example, if their -- if their arm</p> <p>2 was broken at the humerus, while you were -- in</p> <p>3 the handcuffing, you might do something</p> <p>4 different about that other than leave it in that</p> <p>5 handcuff position; correct?</p> <p>6 A. I -- I would -- I would call for medical</p> <p>7 assistance for a person who had a broken bone.</p> <p>8 Q. Uh-huh.</p> <p>9 A. I wouldn't be able to treat them myself.</p> <p>10 Q. Okay. And you'd want to deal with any serious</p> <p>11 medical problem of a person you've taken control</p> <p>12 of?</p> <p>13 A. Yes.</p> <p>14 Q. All right. And you don't need the</p> <p>15 Maximal-Restraint-of-Prisoners policy to deal</p> <p>16 with that, do you?</p> <p>17 A. Pardon?</p> <p>18 Q. You don't need this policy to tell you that?</p> <p>19 You've been trained that already; correct?</p> <p>20 MS. FUNDINGSLAND: Objection, compound</p> <p>21 question.</p> <p>22 (Pause.)</p> <p>23 BY MR. BENNETT:</p> <p>24 Q. You can go ahead and answer it.</p> <p>25 A. Oh, I -- I'm sorry. Can you say it again?</p>	<p>1 A. The day that we were giving our statements.</p> <p>2 Q. Did you show it to your attorney before that?</p> <p>3 A. I don't recall.</p> <p>4 Q. Did you show it to anybody other than your wife</p> <p>5 before that?</p> <p>6 A. I don't believe so.</p> <p>7 Q. Did you show it to Officer Gorman before his</p> <p>8 statement?</p> <p>9 A. I... I don't remember if --</p> <p>10 Q. You gave your statement on the 15th of</p> <p>11 September, 2010; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And that's Exhibit 37; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And Gorman didn't give his -- I'm showing you</p> <p>16 Exhibit 38 -- until the next day.</p> <p>17 A. (Reviewing exhibit.)</p> <p>18 Q. September 16th; correct?</p> <p>19 A. As I recall, we both went there on the 15th to</p> <p>20 do it and it ran too long and I had to come back</p> <p>21 on the 16th, as well, I believe. Or -- I'm not</p> <p>22 sure.</p> <p>23 Q. What time did you go there?</p> <p>24 A. It was in the afternoon.</p> <p>25 Q. It says 2:30 is when you give it. 2:31. 14:31</p>

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<p style="text-align: right;">54</p> <p>1 is 2:31, isn't it?</p> <p>2 A. I think the investigators watched the pen cam</p> <p>3 footage before we --</p> <p>4 Q. Oh. You only gave a 6-page statement. That</p> <p>5 wouldn't take very long, would it?</p> <p>6 A. I don't know.</p> <p>7 Q. Well... And Gorman only gave a 4-page statement;</p> <p>8 correct? If you look at that.</p> <p>9 A. (Reviewing exhibit.)</p> <p>10 It looks like there's 4 pages here.</p> <p>11 Q. And it looked like he came back and gave his</p> <p>12 on -- 16:09 or 4:09 P.M. on the 16th.</p> <p>13 A. That's what it says at the top of the statement.</p> <p>14 Q. All right. Did you and Officer Gorman talk to</p> <p>15 Sergeant Klund and Sergeant Fors together on the</p> <p>16 15th?</p> <p>17 A. Did -- what now?</p> <p>18 Q. Did you and Officer Gorman talk to Sergeant</p> <p>19 Klund and Sergeant Fors together on the 15th</p> <p>20 when you came?</p> <p>21 A. No.</p> <p>22 MS. FUNDINGSLAND: Objection, vague.</p> <p>23 BY MR. BENNETT:</p> <p>24 Q. Well, you say you showed them the video.</p> <p>25 A. I didn't show them the video.</p>	<p style="text-align: right;">56</p> <p>1 they asked anything specific from it, given the</p> <p>2 questions that I'm seeing in my statement.</p> <p>3 Q. In other words, the only reference to the video</p> <p>4 camera appears on the last -- second-to-the-last</p> <p>5 question and answer, correct, on page 6?</p> <p>6 A. Yes. I think so.</p> <p>7 Q. And that's the only question and answer?</p> <p>8 A. If you say so. I think so.</p> <p>9 Q. Did they ask you who had reviewed it?</p> <p>10 A. Pardon?</p> <p>11 Q. Well, was there -- did they talk to you outside</p> <p>12 of this recorded statement?</p> <p>13 A. No.</p> <p>14 Q. Did they ask you questions that weren't</p> <p>15 recorded?</p> <p>16 A. I don't believe so.</p> <p>17 Q. Is there anything about their questioning that</p> <p>18 would let you know that they'd actually seen the</p> <p>19 video?</p> <p>20 A. Ah... I don't remember other than what was --</p> <p>21 other than what's in my statement, the</p> <p>22 questions.</p> <p>23 Q. When did you get to the station...</p> <p>24 Or you met them downtown, in Homicide?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">55</p> <p>1 Q. Oh, I thought you said you did.</p> <p>2 A. My attorney gave it to them.</p> <p>3 Q. All right. Did you watch it with them?</p> <p>4 A. No.</p> <p>5 Q. Did they watch the video before they took the</p> <p>6 statement?</p> <p>7 MS. FUNDINGSLAND: Objection,</p> <p>8 foundation.</p> <p>9 BY MR. BENNETT:</p> <p>10 Q. Before they asked you these questions and took</p> <p>11 your statement --</p> <p>12 A. I --</p> <p>13 Q. -- on the --</p> <p>14 A. -- think they did.</p> <p>15 Q. How do you know?</p> <p>16 A. Because I think they did.</p> <p>17 Q. Based on what information?</p> <p>18 A. Based on my attorney gave it to them and then</p> <p>19 they didn't -- we didn't give -- I didn't give</p> <p>20 my statement for another half an hour probably.</p> <p>21 I don't know. I am under the impression that</p> <p>22 they watched it.</p> <p>23 Q. All right. Did they ask you about the -- what</p> <p>24 they saw on the tape in your statement?</p> <p>25 A. Um... I don't -- I don't know. I don't think</p>	<p style="text-align: right;">57</p> <p>1 Q. When did you get to Homicide on the 15th? Or do</p> <p>2 you think you were there on the 14th?</p> <p>3 A. I don't -- I think I was there on the 15th. And</p> <p>4 I think --</p> <p>5 Q. Do you recall --</p> <p>6 A. I don't recall what time the original</p> <p>7 appointment was for. I -- I don't recall when</p> <p>8 we were scheduled to be there, what time.</p> <p>9 Q. You've read this statement prior to today and</p> <p>10 for purposes of preparing yourself; correct?</p> <p>11 A. Yes.</p> <p>12 Q. Now if you go to page 5...</p> <p>13 A. (Complying.)</p> <p>14 Q. You understand that you had to tell the truth in</p> <p>15 this statement; correct?</p> <p>16 A. Yes.</p> <p>17 Q. And you were asked if you activated your Taser</p> <p>18 any additional times.</p> <p>19 A. Ah --</p> <p>20 Q. It's that answer; correct?</p> <p>21 A. Yes.</p> <p>22 Q. And you gave an answer -- you answered the</p> <p>23 question "Yes." And then you elaborated;</p> <p>24 correct?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">58</p> <p>1 Q. And you said, "I know I activated it at least 2 one more time." And that would have been the 3 final time? You had 5 cycles of your Taser; 4 correct? 5 A. I believe I was told that there were 5 cycles. 6 Q. I can show you the Taser record and you wouldn't 7 deny -- 8 A. I don't disagree. 9 Q. Okay. And you say, "It was at this point that 10 we were able to get the arms fully behind his 11 back and handcuffed together"; correct? That's 12 what you said? 13 A. I know that the last time I activated the Taser 14 was the time prior to we -- us handcuffing him. 15 Q. All right. So once the... 16 The last Taser cycle immediately precedes 17 the final handcuffing; -- 18 A. Yes. 19 Q. -- correct? 20 And one -- you said, "It was also at this 21 time..." 22 And I assume you're meaning in this answer 23 at the time you got him handcuffed "that Smith 24 seemed to calm down a bit." You said that; 25 right?</p>	<p style="text-align: right;">60</p> <p>1 Q. Well, you were -- you actually answered some 2 stuff you weren't asked in the prior answer. 3 "Did you activate your Taser at any additional 4 time?" If you just stuck to your answer you 5 could have said "Yes" to the question before 6 that; right? 7 So you elaborated when you felt like you 8 wanted to elaborate; correct? 9 A. I wasn't asked about Officer Gorman. 10 Q. Okay. Did you find that odd? 11 A. As he was giving a statement, no, I didn't. 12 Q. Well, you were a witness to Officer Gorman's 13 application of force; correct? 14 A. Yes. 15 Q. Okay. Don't you think it was odd that you 16 weren't asked about it? 17 MS. FUNDINGSLAND: Objection, asked and 18 answered. 19 THE WITNESS: No. 20 BY MR. BENNETT: 21 Q. Don't you usually -- don't investigators usually 22 ask witnesses what they saw? 23 A. Yes. 24 Q. Okay. You've asked plenty of witnesses what 25 they saw if you thought they were eyewitnesses</p>
<p style="text-align: right;">59</p> <p>1 A. I did say that. 2 Q. And he was not resisting as hard? 3 A. Yes. 4 Q. And you believed that Smith was giving up at 5 this time and complying; correct? 6 A. Yes. 7 Q. And when a person does that the excuse for force 8 abates? Ends? Correct? 9 A. Yes. 10 Q. Okay. And you say that what -- when you were 11 asked what position he was in upon being 12 handcuffed you say that, "Smith was laying on 13 his stomach and I was sitting on his upper 14 thigh, back of his knees area. I did this 15 because I was worried that he might resume 16 fighting"; correct? 17 A. Yes. 18 Q. He never resumed fighting, did he? 19 A. No. 20 Q. Okay. You make no mention of -- in this answer 21 of Gorman; correct? 22 A. No. 23 Q. You make no mention of Gorman's application of 24 force after the handcuffing; correct? 25 A. I wasn't asked to.</p>	<p style="text-align: right;">61</p> <p>1 to something, didn't you? 2 A. Yes. 3 Q. And you were told at the beginning of this, on 4 the very first page, that this is a -- a 5 criminal investigation into a recent incident 6 you were involved in and it was being done by 7 the Minneapolis Police Department Homicide Unit; 8 correct? 9 A. Yes. 10 Q. Involved the death of a party in custody on 11 which you two were -- were using force on; 12 correct? 13 A. Yes. 14 Q. Okay. So you were seated in a position to see 15 Officer Gorman's conduct; correct? 16 A. Yes. 17 Q. And you were not asked about it? 18 A. I was not. 19 Q. Isn't asking witnesses what they saw sort of 20 Investigation 101? 21 A. I'm not an investigator. 22 Q. But you know enough to -- I mean when you go to 23 a scene and there's a witness do you ask them 24 what they saw and put that in your supplements? 25 A. I don't want to speculate on how Sergeant Fors</p>

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<p style="text-align: right;">62</p> <p>1 or Sergeant Klund run their investigations.</p> <p>2 Q. I'm not asking that. I'm just asking you.</p> <p>3 When you identify a witness at the scene do</p> <p>4 you ask them what they saw and put it in your</p> <p>5 statement?</p> <p>6 A. Yes.</p> <p>7 Q. Because that's what they tell you to do in your</p> <p>8 manual?</p> <p>9 A. Yes.</p> <p>10 Q. All right.</p> <p>11 A. I guess. I don't know -- I don't know where it</p> <p>12 says that in the manual, --</p> <p>13 Q. Well, --</p> <p>14 A. -- but I'll take your word for it.</p> <p>15 Q. Well, you know you're supposed to put the</p> <p>16 material things you observe in your statement,</p> <p>17 your supplement; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And if you talk to a witness you put that -- you</p> <p>20 put what the witness tells you in your</p> <p>21 supplement so that the prosecutor can know what</p> <p>22 to do with it?</p> <p>23 A. Yes.</p> <p>24 Q. And whether that witness is worthy of</p> <p>25 discussing as a potential witness in a later</p>	<p style="text-align: right;">64</p> <p>1 mechanical force downward on Mr. Smith while he</p> <p>2 was in the prone restraint position?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And he did so for a period of several</p> <p>5 minutes; correct?</p> <p>6 A. I don't know how long.</p> <p>7 Q. Okay. You filmed it occasionally? And we'll go</p> <p>8 through parts of it; correct?</p> <p>9 A. Correct.</p> <p>10 Q. You saw his knees -- Knee or knees... Actually</p> <p>11 you see the left knee, the right knee and both</p> <p>12 knees on David Cornelius Smith's back in your</p> <p>13 pen camera video; correct?</p> <p>14 A. Yes.</p> <p>15 Q. All right. And in the Taser video you can see</p> <p>16 his right knee, both knees and left knee on his</p> <p>17 back; correct?</p> <p>18 A. From the Taser video?</p> <p>19 Q. Yes.</p> <p>20 A. I don't think so.</p> <p>21 Q. We'll go through it.</p> <p>22 Um...</p> <p>23 THE WITNESS: Can I go to the bathroom?</p> <p>24 MR. BENNETT: Sure. That's -- like I</p> <p>25 say, tell me when you need to...</p>
<p style="text-align: right;">63</p> <p>1 prosecution; correct?</p> <p>2 A. Yes.</p> <p>3 Q. At this time did you know that the medical</p> <p>4 examiner was going to rule this as a homicide?</p> <p>5 A. No.</p> <p>6 Q. Did you -- did you know that he was going to</p> <p>7 rule that Mr. Smith died of mechanical asphyxia?</p> <p>8 A. No.</p> <p>9 Q. Do you know that today?</p> <p>10 A. Yes.</p> <p>11 Q. Do you know... Mechanical asphyxia implies the</p> <p>12 use of mechanical force; do you understand that?</p> <p>13 A. Yes.</p> <p>14 Q. Do you know who Dr. Baker said the agent or the</p> <p>15 person that used the mechanical force was?</p> <p>16 A. No.</p> <p>17 Q. Who do you think he said?</p> <p>18 A. Both of us?</p> <p>19 Q. In any event, you saw Officer Gorman apply</p> <p>20 mechanical force to the back of -- downward</p> <p>21 pressure to the back of Mr. Smith; correct?</p> <p>22 A. Officer Gorman was restraining his upper body.</p> <p>23 Q. Let me just ask you the question again and I'd</p> <p>24 like an answer.</p> <p>25 Did you -- did you see Officer Gorman apply</p>	<p style="text-align: right;">65</p> <p>1 THE WITNESS: Sure.</p> <p>2 (Discussion held off the record.)</p> <p>3 MR. BENNETT: Go off the record at</p> <p>4 10:05.</p> <p>5 (Recess taken.)</p> <p>6 MR. BENNETT: Back on the record at</p> <p>7 10:12.</p> <p>8 Pull that -- pull page 5 back up, please.</p> <p>9 MS. BENNETT: Exhibit 37?</p> <p>10 MR. BENNETT: Exhibit 37, page 5.</p> <p>11 And go to, "What position was Smith?"</p> <p>12 (Exhibit displayed.)</p> <p>13 BY MR. BENNETT:</p> <p>14 Q. You indicate you were sitting on his upper</p> <p>15 thighs, back-of-knees area; correct?</p> <p>16 A. Yes.</p> <p>17 Q. That was a restraint that was in addition to the</p> <p>18 restraint imposed by the handcuffs and the prone</p> <p>19 position itself; correct?</p> <p>20 A. I -- I don't know that I'd refer to it as a</p> <p>21 restraint.</p> <p>22 Q. Well, I'm just... What would you call it?</p> <p>23 A. We were trying to prevent him from getting up --</p> <p>24 Q. Okay.</p> <p>25 A. -- or kicking, or fighting, or spitting, or</p>

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<p style="text-align: right;">66</p> <p>1 anything else.</p> <p>2 Q. He didn't bite, did he? He didn't try to bite</p> <p>3 you?</p> <p>4 A. I was on his legs.</p> <p>5 Q. Oh.</p> <p>6 A. He didn't try to bite me.</p> <p>7 Q. There's no evidence that he tried to bite you or</p> <p>8 bite Gorman; correct?</p> <p>9 A. I -- I don't think so.</p> <p>10 Q. There's no evidence he spit at anybody, in</p> <p>11 either statement, or in anybody's supplement, or</p> <p>12 on the video; correct?</p> <p>13 A. No. But I didn't say that he did. I said we</p> <p>14 were concerned that he would.</p> <p>15 Q. Well, I know. But you can't shoot him because</p> <p>16 you're concerned that he might bite or spit on</p> <p>17 you, can you?</p> <p>18 A. No.</p> <p>19 MS. FUNDINGSLAND: Objection,</p> <p>20 argumentative.</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. I mean you do things in response to things that</p> <p>23 the subject does; correct?</p> <p>24 A. (Pausing.)</p> <p>25 Q. You use force as a response to force, correct,</p>	<p style="text-align: right;">68</p> <p>1 lower torso and legs?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So that would have been a restraint in</p> <p>4 addition to the handcuffing; correct?</p> <p>5 A. I guess it would. I'm just having trouble with</p> <p>6 a lot -- some of the terminology you're using,</p> <p>7 that's all.</p> <p>8 Q. Okay. Well, I'm trying to use the language you</p> <p>9 used. I just understand that to be a restraint.</p> <p>10 And I think you do, too, don't you?</p> <p>11 A. I -- yes.</p> <p>12 Q. And the idea is to restrict movement?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And this is after the time in which you</p> <p>15 said he'd calmed down a bit and was not</p> <p>16 resisting as hard; correct?</p> <p>17 A. Well, it was a continuation. I was in that</p> <p>18 position for the handcuffing.</p> <p>19 Q. Well, yeah. And you stayed there after he</p> <p>20 calmed down and was not resisting as hard;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. And you stayed there after you believed he was</p> <p>24 giving up and complying?</p> <p>25 A. Well, I said he -- "I believe that Smith was</p>
<p style="text-align: right;">67</p> <p>1 and his actions? That's what I've heard</p> <p>2 testifying for years and years; is that -- is</p> <p>3 that true?</p> <p>4 MS. FUNDINGSLAND: Objection, compound</p> <p>5 question and testimony.</p> <p>6 BY MR. BENNETT:</p> <p>7 Q. Go ahead and answer the question.</p> <p>8 A. You have to ask it again.</p> <p>9 Q. You do things in response to -- you -- you make</p> <p>10 force decisions based on the subject's response</p> <p>11 to commands and that sort of thing; correct?</p> <p>12 A. Yes.</p> <p>13 Q. All right. Well, you -- in addition to</p> <p>14 handcuffing him and placing him in a prone</p> <p>15 position you sat on his upper knees and thighs?</p> <p>16 MS. FUNDINGSLAND: Objection,</p> <p>17 mischaracterizes the deponent's testimony.</p> <p>18 BY MR. BENNETT:</p> <p>19 Q. Upper thighs and back of knees; is that right?</p> <p>20 A. After handcuffing him?</p> <p>21 Q. Yes.</p> <p>22 A. Yeah.</p> <p>23 Q. And you did that to restrain his movements?</p> <p>24 A. Yes.</p> <p>25 Q. And in part to restrain the movement of his</p>	<p style="text-align: right;">69</p> <p>1 giving up this time and complying."</p> <p>2 Q. And you stayed there after that?</p> <p>3 A. Right. Because I was concerned that given his</p> <p>4 prior behavior that at any time he may resume</p> <p>5 fighting or trying to get away.</p> <p>6 Q. Well, you stayed there until he was brain dead,</p> <p>7 didn't you?</p> <p>8 MS. FUNDINGSLAND: Objection,</p> <p>9 argumentative.</p> <p>10 THE WITNESS: I don't know when he would</p> <p>11 have...</p> <p>12 BY MR. BENNETT:</p> <p>13 Q. Well, when you got off him he was completely and</p> <p>14 wholly unresponsive; correct? He was not</p> <p>15 breathing? He did not have a pulse; correct?</p> <p>16 A. I don't think so.</p> <p>17 Q. You don't think he had a pulse? Or you don't</p> <p>18 think I'm correct?</p> <p>19 A. I don't think he had a pulse.</p> <p>20 Q. When you got up off of him he was not breathing,</p> <p>21 he did not have a pulse; correct?</p> <p>22 A. It was -- that is what I believe, yes.</p> <p>23 Q. All right. Do you know when he ceased</p> <p>24 breathing?</p> <p>25 A. I do not.</p>

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<p style="text-align: right;">70</p> <p>1 Q. The chief medical examiner testified that the</p> <p>2 last evidence of breath he has is about</p> <p>3 2 minutes and 45 minutes [sic] after the first</p> <p>4 Taser cycle. That would be several minutes</p> <p>5 before you got off him; correct?</p> <p>6 A. I don't know what he said.</p> <p>7 Q. All right. Well, assume that to be correct,</p> <p>8 that it -- let's see if I can...</p> <p>9 Well, let me...</p> <p>10 Have you received training that once you</p> <p>11 have the individual handcuffed that you're</p> <p>12 supposed to get off the subject?</p> <p>13 A. I don't think so.</p> <p>14 Q. Have you been taught that they should be turned</p> <p>15 on their side or in an upright position?</p> <p>16 A. If you've used a maximal restraint.</p> <p>17 Q. Only in that -- and only in that circumstance?</p> <p>18 A. I mean there may be other circumstances when you</p> <p>19 would use it, I'm not aware of it.</p> <p>20 Q. Well, do you -- do you know -- well, the -- the</p> <p>21 medical examiner said, "If once he had been</p> <p>22 handcuffed, had the officers not remained on top</p> <p>23 of the subject and had the subject been turned</p> <p>24 on his side or in an upward position of comfort,</p> <p>25 would he have died of mechanical asphyxia?"</p>	<p style="text-align: right;">72</p> <p>1 Q. So you don't think you have to do that for</p> <p>2 regular prisoners --</p> <p>3 MS. FUNDINGSLAND: Objection, asked --</p> <p>4 BY MR. BENNETT:</p> <p>5 Q. -- if you're applying force to --</p> <p>6 MS. FUNDINGSLAND: -- and --</p> <p>7 Excuse me. I'm sorry.</p> <p>8 BY MR. BENNETT:</p> <p>9 Q. Is that your question -- is that your statement?</p> <p>10 MS. FUNDINGSLAND: Objection, asked and</p> <p>11 answered.</p> <p>12 THE WITNESS: I don't -- no more so than</p> <p>13 you would for anybody.</p> <p>14 MR. BENNETT: Okay.</p> <p>15 BY MR. BENNETT:</p> <p>16 Q. Have you been trained in the use of the prone</p> <p>17 restraint maneuver?</p> <p>18 A. It's not a term that we use to my knowledge.</p> <p>19 Q. You indicated knowledge of it before.</p> <p>20 A. I understand what you're referring to, but it's</p> <p>21 not a term that is -- that I'm familiar with</p> <p>22 being used by the department.</p> <p>23 Q. Are you familiar with it being used in case law?</p> <p>24 A. I don't know.</p> <p>25 Q. So you've never been trained on the dangers of a</p>
<p style="text-align: right;">71</p> <p>1 Dr. Baker said, "No, he would not have died of</p> <p>2 mechanical asphyxia."</p> <p>3 Do you have any belief to the contrary?</p> <p>4 A. I don't know.</p> <p>5 Q. Okay. Do you have any evidence that that isn't</p> <p>6 true?</p> <p>7 A. Again, I'm not -- I mean I'm not a doctor. I</p> <p>8 don't know what would have happened to him.</p> <p>9 Q. Were you able to determine any breath or</p> <p>10 breathing after 2 minutes and 45 seconds after</p> <p>11 you started the Taser, the first cycle?</p> <p>12 A. Yeah, he was breathing.</p> <p>13 After when?</p> <p>14 Q. After 2 minutes and 45 seconds of when you</p> <p>15 started the first cycle of the Taser.</p> <p>16 A. I don't know what you mean. Are you talking</p> <p>17 about when the medical examiner thinks that he</p> <p>18 was no longer breathing?</p> <p>19 Q. Yeah.</p> <p>20 A. I didn't notice that he wasn't breathing.</p> <p>21 Q. All right. You're supposed to continually</p> <p>22 check; correct?</p> <p>23 A. If you're referring to the "Maximal Restraint of</p> <p>24 Prisoners," it says monitor a change in behavior</p> <p>25 or level of consciousness.</p>	<p style="text-align: right;">73</p> <p>1 prone restraint maneuver; is that what you're</p> <p>2 saying?</p> <p>3 A. I guess not. I'm not aware of it.</p> <p>4 Q. Okay.</p> <p>5 MR. BENNETT: Do you have Exhibit 25?</p> <p>6 The color one?</p> <p>7 MR. STORMS: (Distributing Exhibit 25.)</p> <p>8 MR. BENNETT: Do you have one for me?</p> <p>9 MR. STORMS: (Distributing Exhibit 25.)</p> <p>10 BY MR. BENNETT:</p> <p>11 Q. This is training materials that were given to us</p> <p>12 by the City of Minneapolis on hobbles, maximum</p> <p>13 restraint...</p> <p>14 A. Excuse me.</p> <p>15 Q. Is -- did you get -- have you seen this</p> <p>16 PowerPoint in your training?</p> <p>17 A. Probably.</p> <p>18 Q. Okay. You had the use-of-force training that</p> <p>19 includes this?</p> <p>20 A. I'm sure that I have.</p> <p>21 Q. All right. And the... You see these... It</p> <p>22 says, "Any individual who chooses to restrain</p> <p>23 someone may be charged and found to be</p> <p>24 responsible for the intended or unintended</p> <p>25 impact." Correct?</p>

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<p style="text-align: right;">74</p> <p>1 A. What -- where are you reading from?</p> <p>2 Q. (Pointing to exhibit.)</p> <p>3 A. Oh. Is this the correct page?</p> <p>4 Q. (Nodding.)</p> <p>5 You've been told that?</p> <p>6 A. I am not familiar with what this is coming from.</p> <p>7 Q. Well, this is what's been given to us by the</p> <p>8 Minneapolis Police Department as part of your</p> <p>9 training. Are you --</p> <p>10 A. Is this for police officers?</p> <p>11 Q. Yeah.</p> <p>12 A. Or for citizens?</p> <p>13 Q. Police officers.</p> <p>14 A. So this isn't -- this isn't part of a citizen's</p> <p>15 arrest part?</p> <p>16 Q. No.</p> <p>17 A. I'm not familiar with it.</p> <p>18 Q. Well, is it -- is it true that in 4th Amendment</p> <p>19 work and use-of-force training that any use of</p> <p>20 force or restraint should be necessary,</p> <p>21 reasonable and valid? You've been trained that</p> <p>22 a hundred times, haven't you?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And the next -- the next PowerPoint slide</p> <p>25 says, "When there is a restraint-related death</p>	<p style="text-align: right;">76</p> <p>1 A. I'm sorry. Say again.</p> <p>2 Q. Okay. Have you been taught that any subject you</p> <p>3 restrain should be put on his or her side or in</p> <p>4 an upright position?</p> <p>5 A. No.</p> <p>6 Q. Have you been taught that you must remain --</p> <p>7 must maintain constant observation of someone</p> <p>8 who is being restrained?</p> <p>9 A. I'm not sure what context you're... No.</p> <p>10 Q. Okay. Now your shift ended at 4:30; correct?</p> <p>11 A. Yes.</p> <p>12 Q. What time did you get this call?</p> <p>13 A. Sometime around 4:00 P.M. or a little before.</p> <p>14 Q. Okay.</p> <p>15 A. I think.</p> <p>16 Q. Timothy Gorman was your partner for that shift?</p> <p>17 A. Yes.</p> <p>18 Q. How often had you worked with Gorman in the</p> <p>19 past?</p> <p>20 A. We had been partners for approximately I think</p> <p>21 9 months at that point.</p> <p>22 Q. Are you still partners today?</p> <p>23 A. We still work on the same shift, yes.</p> <p>24 Q. Are you still partners today?</p> <p>25 A. No.</p>
<p style="text-align: right;">75</p> <p>1 the responsibility of those who restrain the</p> <p>2 individual will depend on the cause of death."</p> <p>3 Do you see that?</p> <p>4 A. I don't -- where did you get -- I'm not sure</p> <p>5 where you got -- I don't know where you got this</p> <p>6 from.</p> <p>7 Q. Have you seen that before? Were you told that?</p> <p>8 A. I don't know if I've seen it before.</p> <p>9 Q. All right.</p> <p>10 A. It doesn't --</p> <p>11 Q. Well, --</p> <p>12 A. It doesn't look like something that came from --</p> <p>13 it looks like something that would be out of the</p> <p>14 citizen's arrest portion of the...</p> <p>15 I'm not familiar with it.</p> <p>16 Q. Okay. Have you been taught not to remain on top</p> <p>17 of any subject after the subject has been</p> <p>18 restrained?</p> <p>19 A. I'm sorry. Say again.</p> <p>20 Q. Have you been taught not to remain on top of a</p> <p>21 subject after the subject has been restrained?</p> <p>22 A. No.</p> <p>23 Q. Have you been taught that any subject you</p> <p>24 restrain should be put on the side or in an</p> <p>25 upright position?</p>	<p style="text-align: right;">77</p> <p>1 Q. In September of 2010 were you friends?</p> <p>2 A. We were friendly. We didn't hang out outside of</p> <p>3 work together.</p> <p>4 Q. Never?</p> <p>5 A. No.</p> <p>6 Q. Never went to have a beer with him or go</p> <p>7 shoot --</p> <p>8 A. I --</p> <p>9 Q. -- with him?</p> <p>10 A. -- think he was at a retirement get-together,</p> <p>11 the same retirement get-together that I was one</p> <p>12 time.</p> <p>13 Q. And that's --</p> <p>14 A. But I don't even know if that was before.</p> <p>15 Q. That's all, though?</p> <p>16 A. Yeah.</p> <p>17 Q. You didn't socialize with him?</p> <p>18 A. No.</p> <p>19 Q. And how did it come about that you're no longer</p> <p>20 partners?</p> <p>21 A. It was just a shuffling of squads.</p> <p>22 Q. Okay. Who is your partner now?</p> <p>23 A. Do you want their names?</p> <p>24 Q. Yeah.</p> <p>25 A. Officer Reimer and Officer Gingrich.</p>

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<p style="text-align: right;">78</p> <p>1 Q. Do your families know each other, yours and</p> <p>2 Gorman?</p> <p>3 MS. FUNDINGSLAND: I'm sorry, I didn't</p> <p>4 hear that one.</p> <p>5 BY MR. BENNETT:</p> <p>6 Q. Do your families know each other's families?</p> <p>7 A. My wife knows who he is. I mean she doesn't</p> <p>8 know him.</p> <p>9 Q. Okay. Showing you Exhibit 26. Have you seen</p> <p>10 this before?</p> <p>11 A. I don't recall if I've seen it before or not.</p> <p>12 Q. You know what they are... You know what an</p> <p>13 Incident Detail Report is, don't you?</p> <p>14 A. I believe so, yes.</p> <p>15 Q. And this is the Incident Detail Report for</p> <p>16 the --</p> <p>17 A. Call.</p> <p>18 Q. -- the matter we're here?</p> <p>19 A. Yes.</p> <p>20 Q. It shows that Unit 110, that was you and Gorman,</p> <p>21 was assigned at 3:49:44, almost 3:50; correct?</p> <p>22 A. Okay.</p> <p>23 Q. And it -- it shows... You don't have any reason</p> <p>24 to disagree with that; correct?</p> <p>25 A. No.</p>	<p style="text-align: right;">80</p> <p>1 through Dispatch, but your arrival was</p> <p>2 automatically marked through your GPS system; do</p> <p>3 you agree with that?</p> <p>4 A. I don't recall how we arrived.</p> <p>5 Q. Or how they got that time?</p> <p>6 A. I don't recall.</p> <p>7 Q. Okay. Between the time you received the initial</p> <p>8 information from Dispatch and when you arrived</p> <p>9 at the YMCA you did not receive any additional</p> <p>10 information related to David Smith or what was</p> <p>11 ongoing at the YMCA; correct?</p> <p>12 A. Other than what was in the "Comments" of the</p> <p>13 call are you saying?</p> <p>14 Q. Yeah.</p> <p>15 A. I don't know. I don't think so.</p> <p>16 Q. The "Comments" is what's put out on the</p> <p>17 dispatch?</p> <p>18 A. The "Comments" are what the -- the caller to 911</p> <p>19 tells the call-taker. And then that gets put --</p> <p>20 whatever they say is going on gets put in the</p> <p>21 "Comments."</p> <p>22 Q. Well, that's not entirely true. You don't get</p> <p>23 the actual 911 call. You get the distillation</p> <p>24 from Dispatch about what the 911 call is about;</p> <p>25 correct?</p>
<p style="text-align: right;">79</p> <p>1 Q. Where were you at the time you received the</p> <p>2 dispatch?</p> <p>3 A. I think we were -- I think we were at the</p> <p>4 1st Precinct station.</p> <p>5 Q. How far away is that?</p> <p>6 A. (Pausing.)</p> <p>7 Q. That's the downtown command precinct; correct?</p> <p>8 A. Yeah. Seven, eight blocks. I don't know.</p> <p>9 Q. Kind of difficult --</p> <p>10 A. Not far.</p> <p>11 Q. Was it difficult to get to at that time of day?</p> <p>12 A. It did take a little time to get there because</p> <p>13 of traffic.</p> <p>14 Q. And it shows you arrived at -- that you were</p> <p>15 en route at 15:52:51 or about 3:53; correct?</p> <p>16 P.M.?</p> <p>17 A. Yes.</p> <p>18 Q. And it shows you arrived at a little after</p> <p>19 4:00 o'clock or 16:00 and 25 seconds.</p> <p>20 A. Okay. Yep.</p> <p>21 Q. Any reason to disagree with that?</p> <p>22 A. No.</p> <p>23 Q. My understanding of Exhibit 27 [sic], based on</p> <p>24 other depositions we've done in other cases, is</p> <p>25 that you did not mark your arrival manually or</p>	<p style="text-align: right;">81</p> <p>1 A. Yeah.</p> <p>2 Q. All right. So you didn't hear the actual 911</p> <p>3 call?</p> <p>4 A. No.</p> <p>5 Q. But you get... Obviously the information comes</p> <p>6 from --</p> <p>7 A. Somewhere.</p> <p>8 Q. -- from the call, --</p> <p>9 A. Dispatcher, yeah.</p> <p>10 Q. -- but you get it from the dispatcher?</p> <p>11 A. Yes.</p> <p>12 Q. Did you enter the YMCA from the first floor or</p> <p>13 the skyway level?</p> <p>14 A. First floor.</p> <p>15 Q. Were you met by anyone from the YMCA staff?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know that person's name?</p> <p>18 A. I believe it was -- her -- I don't know her last</p> <p>19 name, but I believe her first name is Courtney.</p> <p>20 Q. Okay. How long did you talk to Courtney?</p> <p>21 A. A short time.</p> <p>22 Q. What additional information did you receive from</p> <p>23 Courtney?</p> <p>24 A. She stated that -- to the best of my</p> <p>25 recollection she stated that there was a member</p>

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<p style="text-align: right;">82</p> <p>1 on the 6th floor that was causing some problems</p> <p>2 for a juvenile.</p> <p>3 Q. Did she -- did you have any understanding if</p> <p>4 this is most likely a mental health call at that</p> <p>5 time?</p> <p>6 A. I don't -- I have no idea.</p> <p>7 Q. Okay. So by the time you and Officer Gorman</p> <p>8 were traveling upstairs you don't have any</p> <p>9 information that David Smith has actually</p> <p>10 committed any crime at all, do you?</p> <p>11 A. No.</p> <p>12 Q. Okay. And you have no information that he</p> <p>13 physically assaulted anyone in any fashion?</p> <p>14 A. No.</p> <p>15 Q. Did you have some belief based on what they told</p> <p>16 you, you were dealing with a mental health</p> <p>17 issue?</p> <p>18 A. I don't know. I don't think so. I don't know.</p> <p>19 Q. You don't remember?</p> <p>20 A. (Pausing.)</p> <p>21 Q. You have to deal with mentally ill people in the</p> <p>22 city of Minneapolis and downtown a fair amount,</p> <p>23 don't you?</p> <p>24 A. Yes.</p> <p>25 Q. In fact, it's something that's done on a</p>	<p style="text-align: right;">84</p> <p>1 appointment, so I was letting her know that I</p> <p>2 wasn't going to be home for her to make her</p> <p>3 appointment.</p> <p>4 Q. Okay. An appointment you were going to be at?</p> <p>5 A. No. I was going to be babysitting.</p> <p>6 Q. Okay. How -- you had kids you would have had to</p> <p>7 take care of?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Did someone from the YMCA escort you to</p> <p>10 David Smith?</p> <p>11 A. I -- I believe Courtney accompanied us up to the</p> <p>12 6th floor.</p> <p>13 Q. The stairs or the elevators?</p> <p>14 A. Elevator.</p> <p>15 Q. Okay. And where was David Smith when you saw</p> <p>16 him?</p> <p>17 A. He was just -- get off the elevator, he was just</p> <p>18 to our left.</p> <p>19 Q. My understanding is that on the 6th floor</p> <p>20 basketball court area there are three</p> <p>21 essentially full-size basketball courts with</p> <p>22 kind of fabric-y or plastic-y curtains that</p> <p>23 separate them.</p> <p>24 A. I don't know how many basketball courts there</p> <p>25 are. There was a curtain hanging.</p>
<p style="text-align: right;">83</p> <p>1 reasonably regular basis?</p> <p>2 A. Yes.</p> <p>3 Q. Minneapolis actually has officers who are</p> <p>4 trained specifically to deal with individuals</p> <p>5 who are suffering from mental illness? That's</p> <p>6 the Crisis Intervention Team or CIT; correct?</p> <p>7 A. Yes.</p> <p>8 Q. Are you a member of CIT?</p> <p>9 A. I am not.</p> <p>10 Q. Is Gorman?</p> <p>11 A. I don't think so.</p> <p>12 Q. Did you call for a member of CIT before making</p> <p>13 contact with David Smith?</p> <p>14 A. No.</p> <p>15 Q. Do you know what if any plans you had later that</p> <p>16 evening?</p> <p>17 A. Ah... I was going to watch the football game I</p> <p>18 think. I think that's all I can... That's it.</p> <p>19 Q. Kids' football game? NFL football game?</p> <p>20 A. NFL.</p> <p>21 Q. Okay. I mean you... As far as you knew, or at</p> <p>22 least... And I got from the call that perhaps</p> <p>23 your wife was expecting you home in your normal</p> <p>24 time after your shift stopped; correct?</p> <p>25 A. Well, she was going -- she had -- she had an</p>	<p style="text-align: right;">85</p> <p>1 Q. Okay. So there's more than one basketball court</p> <p>2 and there was a curtain that separated at least</p> <p>3 the two of them?</p> <p>4 A. It would appear that way.</p> <p>5 Q. Okay. Did you take the staff elevator then?</p> <p>6 A. I don't think so. I think it was a regular</p> <p>7 elevator.</p> <p>8 Q. Were there children playing on the courts on the</p> <p>9 other side of the curtain?</p> <p>10 A. (Pausing.)</p> <p>11 Q. On both sides of the curtain?</p> <p>12 A. No. They were on one side of the curtain.</p> <p>13 Q. What was David Smith doing when you first laid</p> <p>14 eyes on him?</p> <p>15 A. Digging through a backpack or a bag or</p> <p>16 something.</p> <p>17 Q. So he wasn't doing anything criminal?</p> <p>18 A. No.</p> <p>19 Q. He wasn't threatening anybody?</p> <p>20 A. Nope.</p> <p>21 Q. And at that point there's no reason to use force</p> <p>22 on him at all?</p> <p>23 A. No.</p> <p>24 Q. Did you and Gorman approach him?</p> <p>25 A. We did.</p>

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<p style="text-align: right;">86</p> <p>1 Q. Did you say anything to him?</p> <p>2 A. We asked him if we could speak to him.</p> <p>3 Q. What did he say?</p> <p>4 A. He didn't say anything.</p> <p>5 Q. Okay. And that -- was that odd?</p> <p>6 A. It's -- it's a little odd.</p> <p>7 Q. It didn't appear that he was with anybody else,</p> <p>8 did it?</p> <p>9 A. Not to me.</p> <p>10 Q. And you didn't receive any information or</p> <p>11 observe anything that led you to believe he had</p> <p>12 a weapon?</p> <p>13 A. We were not given any information.</p> <p>14 Q. And you didn't see any weapon?</p> <p>15 A. He had some small silver object in his hand. I</p> <p>16 didn't know what it was initially.</p> <p>17 Q. What was it?</p> <p>18 A. It turned out to be packets of medicine of some</p> <p>19 sort.</p> <p>20 Q. Okay. But it wasn't a gun or a knife?</p> <p>21 A. No.</p> <p>22 Q. Or anything -- any traditional weaponry of which</p> <p>23 you're aware?</p> <p>24 A. No.</p> <p>25 Q. Okay. What events occurred that led you to</p>	<p style="text-align: right;">88</p> <p>1 stairwell?</p> <p>2 A. No, he was walking in the direction -- I --</p> <p>3 there may have been a stairwell over there, I</p> <p>4 don't know.</p> <p>5 Q. He was walking away from you?</p> <p>6 A. Yes. Towards the people who were on the court.</p> <p>7 Q. I think there is a -- that is how people get up</p> <p>8 and down? The people use the stairway, don't</p> <p>9 they?</p> <p>10 A. I don't know.</p> <p>11 Q. Okay. Any reason you couldn't just let him</p> <p>12 leave at that point?</p> <p>13 A. He would have left without his bags.</p> <p>14 Q. Okay. That's not illegal?</p> <p>15 A. No. But there was no indication to me that he</p> <p>16 was leaving.</p> <p>17 Q. And he was a member and not some interloper? I</p> <p>18 mean he was there --</p> <p>19 A. He was a member, yes.</p> <p>20 Q. -- according to the terms of his membership?</p> <p>21 A. Yes.</p> <p>22 Q. When he was walking away from you did you or</p> <p>23 Gorman give an order for him to stop or turn</p> <p>24 around?</p> <p>25 A. We asked him to stop, yes.</p>
<p style="text-align: right;">87</p> <p>1 eventually make physical contact with him?</p> <p>2 A. He was unresponsive to our requests to speak</p> <p>3 with him. He continued to walk away from us,</p> <p>4 back away from us as we walked towards him.</p> <p>5 Q. Had you ever been trained that mentally ill</p> <p>6 individuals experiencing episodes, whether</p> <p>7 psychotic or, you know, schizophrenic, related</p> <p>8 to their illness, don't like to be touched?</p> <p>9 A. I may have. I don't know.</p> <p>10 Q. Okay. Before you made contact with him had you</p> <p>11 personally observed Mr. Smith do anything</p> <p>12 aggressive to you?</p> <p>13 A. No.</p> <p>14 Q. In fact, he didn't do anything aggressive to you</p> <p>15 before you laid hands on him; correct?</p> <p>16 A. Not that I recall.</p> <p>17 Q. All right. And he attempted to walk away from</p> <p>18 you at some point; correct?</p> <p>19 A. Initially.</p> <p>20 Q. Which basketball court was he on when he walked</p> <p>21 away from you?</p> <p>22 A. If you're facing -- if you're at the elevator</p> <p>23 and you're facing, he was on the right-hand</p> <p>24 side. I don't know what number it is or...</p> <p>25 Q. Was he walking in the direction of the</p>	<p style="text-align: right;">89</p> <p>1 Q. Did he eventually turn around and face you?</p> <p>2 A. He did.</p> <p>3 Q. You've seen the YMCA footage in that regard?</p> <p>4 A. It's a long time ago. I haven't seen it -- I</p> <p>5 just saw it once.</p> <p>6 Q. Well, did he comply with your order to turn</p> <p>7 around?</p> <p>8 A. He did turn around and look at us, yes.</p> <p>9 Q. That would be compliance?</p> <p>10 A. I guess, yes.</p> <p>11 Q. What did you do after he turned around?</p> <p>12 A. As I recall, we walked up and gently laid hands</p> <p>13 on him in order to escort him over towards the</p> <p>14 elevators and then eventually out the door.</p> <p>15 Q. Why was it so important to put hands on him at</p> <p>16 that point?</p> <p>17 A. He wasn't following -- he wasn't complying with</p> <p>18 our requests to come over towards us, speak with</p> <p>19 us. We wanted to ask him what the problem was.</p> <p>20 Q. But he had turned around and faced you with</p> <p>21 nothing in his hands at that point; correct?</p> <p>22 A. He wasn't responding verbally.</p> <p>23 Q. So if I don't talk...</p> <p>24 I mean did you know if he was mute?</p> <p>25 A. The staff did not give us any indication that</p>

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<p style="text-align: right;">90</p> <p>1 would indicate he has trouble communicating.</p> <p>2 Q. Okay.</p> <p>3 MR. BENNETT: Can you get that -- cue up</p> <p>4 the tape, please?</p> <p>5 MS. BENNETT: (Complying.)</p> <p>6 MR. BENNETT: This is a little harder.</p> <p>7 This takes a little longer, to do the Taser...</p> <p>8 So indulge me a bit here, Officer.</p> <p>9 (Viewing video.)</p> <p>10 MR. BENNETT: Will you stop it there?</p> <p>11 (Viewing of video ends.)</p> <p>12 BY MR. BENNETT:</p> <p>13 Q. So in the sequence we saw it -- it goes -- it</p> <p>14 isn't a continuous loop. It's a choppy --</p> <p>15 A. Uh-huh. Yes.</p> <p>16 Q. Have you seen this before?</p> <p>17 A. No. Actually I don't recall seeing this.</p> <p>18 Q. He does turn around and face you two; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And Gorman lays hands on him right there?</p> <p>21 A. Yeah.</p> <p>22 Q. All right.</p> <p>23 MR. BENNETT: Go ahead.</p> <p>24 (Viewing video.)</p> <p>25 BY MR. BENNETT:</p>	<p style="text-align: right;">92</p> <p>1 MS. FUNDINGSLAND: By exhibit number, is</p> <p>2 what I'm saying.</p> <p>3 MR. BENNETT: The tape is Exhibit Number</p> <p>4 -- the Y video...</p> <p>5 MS. FUNDINGSLAND: Just so we have it on</p> <p>6 the record.</p> <p>7 MR. STORMS: The Y video is Exhibit 28.</p> <p>8 MS. FUNDINGSLAND: Okay.</p> <p>9 MR. BENNETT: Yeah.</p> <p>10 (Viewing video.)</p> <p>11 MR. BENNETT: Can you go back a little</p> <p>12 bit?</p> <p>13 MS. BENNETT: Yeah, I think --</p> <p>14 MR. STORMS: And to be clear, I made</p> <p>15 both clips part of the same exhibit.</p> <p>16 MS. FUNDINGSLAND: Okay. That's what I</p> <p>17 was wondering. All right.</p> <p>18 (Playing of videotape continues.)</p> <p>19 MR. BENNETT: So this is -- this is --</p> <p>20 this is prior to -- he's playing basketball in</p> <p>21 this court. And I'll just set the scene for</p> <p>22 that.</p> <p>23 Can you make it go as slow as you can, --</p> <p>24 MS. BENNETT: Yeah.</p> <p>25 MR. BENNETT: -- Kate?</p>
<p style="text-align: right;">91</p> <p>1 Q. Then you both -- it's when you both touch him</p> <p>2 that he gets excited; correct?</p> <p>3 A. It looks like it.</p> <p>4 Q. And then you walk him out of that court into</p> <p>5 this next court; correct?</p> <p>6 A. Yes.</p> <p>7 MR. BENNETT: Can you show the next</p> <p>8 court?</p> <p>9 MS. BENNETT: (Retrieving video.)</p> <p>10 MR. BENNETT: What exhibit number is</p> <p>11 this?</p> <p>12 MR. STORMS: 28.</p> <p>13 MR. BENNETT: This thing goes so fast.</p> <p>14 MS. FUNDINGSLAND: Did you...</p> <p>15 Excuse me, Bob.</p> <p>16 Did you identify for the record that exhibit</p> <p>17 number? I wonder when we were --</p> <p>18 MR. BENNETT: Which one?</p> <p>19 MS. FUNDINGSLAND: Just the -- the one</p> <p>20 before.</p> <p>21 MR. STORMS: The Incident Detail Report?</p> <p>22 MS. FUNDINGSLAND: No. The tape, by</p> <p>23 number.</p> <p>24 MS. BENNETT: The --</p> <p>25 MR. BENNETT: By --</p>	<p style="text-align: right;">93</p> <p>1 (Viewing of video continues.)</p> <p>2 MS. BENNETT: Do you want it faster?</p> <p>3 MR. BENNETT: Yeah, a little faster</p> <p>4 maybe.</p> <p>5 (Viewing of video continues.)</p> <p>6 BY MR. BENNETT:</p> <p>7 Q. All right. There you're bringing him -- this is</p> <p>8 where you brought him, this sequence right here;</p> <p>9 correct?</p> <p>10 MR. BENNETT: Stop it, Kate, please.</p> <p>11 (Viewing of video ends.)</p> <p>12 (Viewing video.)</p> <p>13 BY MR. BENNETT:</p> <p>14 Q. And this is before... Is your pen camera</p> <p>15 operating now?</p> <p>16 A. I -- shortly -- very soon it will be, if it's</p> <p>17 not already.</p> <p>18 Q. Okay. So it's -- I figured it was about at this</p> <p>19 time.</p> <p>20 MR. BENNETT: And then they go off</p> <p>21 camera; right?</p> <p>22 MR. STORMS: There's a gap in --</p> <p>23 MR. BENNETT: Yeah.</p> <p>24 MR. STORMS: -- the security footage.</p> <p>25 BY MR. BENNETT:</p>

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<p style="text-align: right;">94</p> <p>1 Q. And that's at the end when you see... Is that 2 Officer Gorman with his left knee on the back of 3 Mr. Smith? 4 A. Yes. 5 Q. Okay. And his right knee is extended out? 6 A. Yes. 7 Q. And that knee would be placed putting mechanical 8 force downward on Mr. Smith? 9 MR. BENNETT: Play a little bit... 10 (Viewing video.) 11 BY MR. BENNETT: 12 Q. Is that correct? The left knee? 13 A. On his shoulder, yeah. 14 Q. And that's where you turn him over, right there? 15 A. Yes. 16 Q. All right. Did you have to get up off of him to 17 turn him over? 18 A. Yes. 19 Q. All right. 20 MR. BENNETT: That's all I want with 21 that tape. 22 (Viewing of video ends.) 23 MR. BENNETT: We need to get that 24 other -- or back into... 25 BY MR. BENNETT:</p>	<p style="text-align: right;">96</p> <p>1 A. Based on his behavior, yes. 2 Q. And you make decisions about what you're going 3 to do based on the behavior of the person you're 4 dealing with? 5 A. Yeah. 6 Q. So after you brought him into the second court 7 you became involved in the struggle, both you 8 and Gorman were involved in the struggle with 9 Smith; correct? 10 A. Yes. 11 Q. And you recall tasing him five times? 12 A. I don't recall tasing him five times. 13 Q. Showing you Exhibit 34, which is the Taser 14 record... 15 You might have 34... Well, that's 34... 16 That shows that there was -- 17 (Sotto voce discussion between Katie 18 Bennett and Robert Bennett.) 19 BY MR. BENNETT: 20 Q. -- that there were five cycles. 30, 31, 32, 33 21 and 34 in a short period of time there? 22 A. Oh, yes. 23 Q. The Taser... Have you ever looked at these 24 before? 25 A. I think so.</p>
<p style="text-align: right;">95</p> <p>1 Q. At the time he -- that -- that Gorman took -- 2 touched -- first touched him, he wasn't taking 3 an aggressive stance or posture against either 4 of you, was he? 5 A. Well, he was acting agitated. 6 Q. He wasn't in the fighting stance? He didn't 7 have closed fists, did he? 8 A. No. 9 Q. Okay. 10 A. Not that I recall. 11 Q. So after you puts hands on David Smith you ran 12 him around to the other side of the court -- the 13 other court; correct? 14 A. Ran him around? 15 Q. Walked him around? Brought him around? Took 16 him around? 17 A. Okay. Yes. 18 Q. It looked like... It looked to me like it 19 was -- you wanted him there with some speed; is 20 that true? 21 A. We -- I was just trying to get him over there. 22 It was difficult. 23 Q. At the time you took him to the other side of 24 the curtain had you made up your mind to 25 handcuff him at that point?</p>	<p style="text-align: right;">97</p> <p>1 Q. They never match up with the times of anything, 2 do they? 3 A. Oh, you mean prior to this? 4 Q. They give you the date, but they're -- they 5 always give it to you in Greenwich Meridian time 6 or -- 7 A. Yeah, something like that. Yes. 8 Q. So you're not surprised to see the time doesn't 9 necessarily match with either the video or what 10 you think the time was; correct? 11 A. No. 12 Q. Okay. You made a decision to employ the Taser; 13 correct? 14 A. Yes. 15 Q. You made a comment about the Taser on the -- on 16 the pen camera video; is that right? 17 A. Yeah. 18 Q. What did you say? 19 A. I have never -- I had never -- I had never 20 deployed it before. 21 Q. Okay. And did Gorman indicate... 22 I mean it appeared that Gorman didn't have 23 very much experience with it either, did he? 24 A. He doesn't carry one, no. 25 Q. And he wouldn't... Do you now know that if</p>

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<p style="text-align: right;">98</p> <p>1 you're -- if you tased Katie and I held onto</p> <p>2 Katie I wouldn't get tased, would I?</p> <p>3 A. Yes, I know that.</p> <p>4 Q. All right. Gorman got away from him rather --</p> <p>5 when the tasing was occurring; correct?</p> <p>6 A. (Pausing.)</p> <p>7 Q. In the video?</p> <p>8 A. Well, more so from him actually getting a probe</p> <p>9 in him than anything, probably.</p> <p>10 Q. Well, didn't he say that... All right. We can</p> <p>11 go into that later.</p> <p>12 Each... Firing the probes into him was a</p> <p>13 volitional act on your part?</p> <p>14 A. Yes.</p> <p>15 Q. And cycling it five times were five volitional</p> <p>16 acts on your part?</p> <p>17 A. Um... I don't know that I meant to do it five</p> <p>18 times, but every time I pulled the trigger I</p> <p>19 meant to pull it.</p> <p>20 Q. Okay. And the effect was to cycle the Taser and</p> <p>21 it went through the full five seconds each time?</p> <p>22 A. Yes.</p> <p>23 Q. Now you were struck in the face after the first</p> <p>24 tasing; is that correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">100</p> <p>1 Q. Okay. Did he look like he was on -- that he was</p> <p>2 in a position of balance to hit you when he hit</p> <p>3 you?</p> <p>4 A. I don't know how he was balanced.</p> <p>5 Q. Okay. You've been hit in the face prior to</p> <p>6 that, haven't you?</p> <p>7 A. Rarely.</p> <p>8 Q. Well, how many times have you been hit?</p> <p>9 A. Five.</p> <p>10 Q. Did you ever box or wrestle?</p> <p>11 A. No.</p> <p>12 Q. Did it look like he just flailed at you with his</p> <p>13 hand from his hip, all the way around to hit</p> <p>14 you?</p> <p>15 A. No.</p> <p>16 Q. Okay. You eventually got him into a prone</p> <p>17 position; correct?</p> <p>18 A. Excuse me.</p> <p>19 Yes.</p> <p>20 Q. You swung your right leg over his body,</p> <p>21 straddling his buttocks and legs?</p> <p>22 A. Yes.</p> <p>23 Q. And that was something you chose to do?</p> <p>24 A. Yes.</p> <p>25 Q. That was a volitional act?</p>
<p style="text-align: right;">99</p> <p>1 Q. Tell me how he hit you.</p> <p>2 A. With his left hand, I believe.</p> <p>3 Q. All right. Was it open or closed?</p> <p>4 A. It was a fist.</p> <p>5 Q. So, you know, I box some. Was it a right cross?</p> <p>6 A left hook? A left uppercut? Or a jab?</p> <p>7 A. A left roundhouse I would describe it as.</p> <p>8 Q. And you say he had a closed fist?</p> <p>9 A. Yes.</p> <p>10 Q. Does it look closed on the video?</p> <p>11 A. I don't know.</p> <p>12 Q. Were his feet planted?</p> <p>13 A. I don't know.</p> <p>14 Q. Was he stumbling after he got up, after being</p> <p>15 tased?</p> <p>16 A. I don't think so.</p> <p>17 Q. Did he look like he was robo walking or</p> <p>18 shuffling?</p> <p>19 A. I don't know what that means.</p> <p>20 Q. Do you know what a "robo walk" is?</p> <p>21 A. No.</p> <p>22 Q. Okay. Well, did he plant his feet like</p> <p>23 Joe Frazier planted his feet and hit Ali in the</p> <p>24 15th round of the fight in 1970 or...</p> <p>25 A. I don't know.</p>	<p style="text-align: right;">101</p> <p>1 A. Yes.</p> <p>2 Q. And it was equally true that you chose to remain</p> <p>3 straddling or sitting on his legs for the period</p> <p>4 of time that you did?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. I'd like to show you Exhibits 30 and 33.</p> <p>7 These are the MPD documentations of the</p> <p>8 pen camera video.</p> <p>9 Have you ever seen these before?</p> <p>10 A. No.</p> <p>11 Q. If you want to take a few minutes to look at</p> <p>12 those. And I might as well have you -- and you</p> <p>13 can look at Exhibit 31 if you need to, as well.</p> <p>14 So Exhibits 30, 31 and 33.</p> <p>15 MR. BENNETT: Why don't we go off the</p> <p>16 record for 5 minutes and let him take a look at</p> <p>17 those things.</p> <p>18 Because I'm going to be asking you some</p> <p>19 questions about them.</p> <p>20 Off the record at 10:52.</p> <p>21 (Recess taken.)</p> <p>22 MR. BENNETT: Go to Exhibit 15, please.</p> <p>23 (Exhibit displayed.)</p> <p>24 BY MR. BENNETT:</p> <p>25 Q. Just for... You don't... This is...</p>

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<p>1 Dr. Baker prepared this for Ms. Fundingsland 2 and myself, among others. 3 And his video recap is: 4 "Start of [the] first TASER cycle. 5 "End of [the] last TASER cycle. 6 "Handcuffed with knee on back. 7 "Last voluntary sound. 8 "Sonorous breathing starts. 9 "Sonorous breathing ends." 10 He also testified that's the same, agonal 11 breathing is the death rattle. 12 "Knee still on back. 13 "Rolled onto back. 14 "CPR starts." 15 MR. BENNETT: Why don't we -- why don't 16 we play Dr. Baker's tape first. 17 BY MR. BENNETT: 18 Q. And then I want you to -- and then I'll ask you 19 questions about Exhibit 31, 33 and that tape. 20 MR. BENNETT: This is Dr. Baker's tape. 21 (Viewing video.) 22 MR. BENNETT: Stop it. 23 MS. FUNDINGSLAND: This is almost 24 painful. It's too loud. 25 (Viewing of video ends.)</p>	<p>1 MS. BENNETT: Yeah, it gets -- 2 MR. BENNETT: It gets screwed up if you 3 don't play it from the beginning? 4 MR. STORMS: Sometimes, yeah. 5 MR. BENNETT: All right. 6 (Viewing video.) 7 MR. BENNETT: Turn it down a little bit. 8 MR. STORMS: (Adjusting audio volume.) 9 MR. BENNETT: I'm going to ask a couple 10 questions. 11 BY MR. BENNETT: 12 Q. That's him hitting you right there? 13 A. Yeah. 14 Q. Okay. All right. 15 MR. BENNETT: Run it through. 16 You can turn it back up a little bit. 17 MR. STORMS: (Adjusting audio volume.) 18 BY MR. BENNETT: 19 Q. That's Gorman's right knee; right? 20 A. It looks like it. 21 Q. Okay. 22 What was that? 23 A. I don't know. 24 Q. Is that both knees down? 25 A. I don't know.</p>
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<p>1 MR. BENNETT: Can you back it up just a 2 little bit? I want to make sure that's him. 3 MS. FUNDINGSLAND: Did you get it fixed? 4 MR. STORMS: I think so. 5 MS. FUNDINGSLAND: Good. Because it's 6 so loud it distorts things. 7 MR. BENNETT: Go now, but when I tell 8 you to stop it, stop it. 9 (Viewing video.) 10 MR. BENNETT: Stop right now. 11 (Viewing of video ends.) 12 BY MR. BENNETT: 13 Q. He has not hit you yet, has he? 14 A. I don't think so. 15 Q. This is him just prior to hitting you? 16 A. Yes. 17 Q. All right. 18 MR. BENNETT: Go ahead. 19 (Viewing video.) 20 MR. BENNETT: No, it went through... 21 Go back further. 22 (Viewing of video ends.) 23 MR. BENNETT: I want you to go back to 24 where he said he... 25 MR. STORMS: Just --</p>	<p>1 Q. What was that? 2 A. I don't know. 3 Q. That's Gorman, right, saying that? 4 A. Yes. 5 Q. That's his left knee then, right, that's on his 6 back? 7 A. It looks like it. 8 Q. That's between his scapula, that knee, isn't it? 9 A. It looks like it's on the shoulder to me. 10 Q. It does, huh? 11 A. Isn't that the scapula? 12 (Viewing of video continues.) 13 MR. BENNETT: All right. 2 minutes 14 later. Okay. 15 Finish that. 16 (Viewing of video continues.) 17 BY MR. BENNETT: 18 Q. Here's... You're still straddling him at this 19 point; correct? 20 A. I think so. 21 (Viewing of video continues.) 22 BY MR. BENNETT: 23 Q. Are you checking his wrist for a pulse there? 24 A. Yes. 25 Q. You didn't get any, did you?</p>

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<p>1 A. No. 2 (Viewing of video continues.) 3 BY MR. BENNETT: 4 Q. And that's when you turn him over? 5 A. Yes. 6 Q. Okay. That's Gorman? 7 A. Yep. 8 Q. You take a pulse from someplace else then? 9 A. Neck, I think. 10 Q. Carotid? 11 A. I think so. 12 (Viewing of video continues.) 13 BY MR. BENNETT: 14 Q. That's you actually starting chest compressions? 15 A. Yes. 16 (Viewing of video ends.) 17 MR. BENNETT: All right. I think that's 18 the end of his tape. 19 BY MR. BENNETT: 20 Q. You've had the chance to look at Exhibit 30 and 21 Exhibit 31 and Exhibit 33? 22 A. Yes. 23 Q. Do you -- do you have any quarrel with the -- 24 let's start with Exhibit 30, about the -- about 25 the transcript -- or about what they say is</p>	<p>1 A. Yes. 2 Q. -- his nickname? 3 Other than that do you have any -- 4 A. No. 5 Q. How about the Taser video? 6 MS. FUNDINGSLAND: Are you talking about 7 Exhibit 31? 8 MR. BENNETT: Exhibit 32 [sic], the 9 Taser video timeline of events prepared -- 10 MR. OSBORNE: 33. 11 MS. FUNDINGSLAND: Are you -- 12 THE WITNESS: I don't think so. 13 MS. FUNDINGSLAND: Wait a minute. Mine 14 says "33." 15 MR. BENNETT: It is 33. 16 MS. FUNDINGSLAND: Oh. I thought you 17 said "32." 18 MR. BENNETT: No. I'm sorry. If I did, 19 I misspoke. 20 MS. FUNDINGSLAND: I'm going to 21 interpose an objection. 22 He hasn't had a chance to -- I know you gave 23 him some time to look through this, but there's 24 a lot of information on Exhibits 30, 31 and 33, 25 so I'm just going to interpose a standing</p>
107	109
<p>1 happening or what they say is said on 2 Exhibit 30? 3 A. I don't -- I don't know that it's a hundred 4 percent word-for-word, but I don't have a 5 quarrel with it. 6 Q. Are you -- do you -- can you think of something 7 you said that isn't on there or something they 8 say is on there that you didn't say? 9 A. One second. 10 (Reviewing exhibit.) 11 On Page 4, this 10:18 and 10:20, I don't 12 recall that. 13 Q. All right. 14 A. At least not in that -- whatever... 15 Q. You don't recall -- okay. We can play that. 16 All right. You don't recall Gorman saying 17 that? 18 A. No. 19 Q. Do you call Mr. -- Officer Gorman "Jimi"? 20 A. It's a nickname. 21 Q. Okay. I mean I thought I heard "Jimi," not 22 "Timmy"? 23 A. Yeah. It's a nickname. 24 Q. All right. You were referring to Officer Gorman 25 by the word nickname -- by the word "Jimi," --</p>	<p>1 objection to asking him questions to make him 2 commit to whether this is correct or not. 3 MR. BENNETT: All right. I don't think 4 that's a legal grounds for objection, but you 5 can do whatever you want. 6 MS. FUNDINGSLAND: Lack of foundation 7 then. 8 BY MR. BENNETT: 9 Q. We took some time off for you to read this; 10 correct? 11 A. The time just now? 12 Q. Yeah. 13 A. Yeah. 14 Q. And you're, I would guess, most familiar with 15 the times and the words that are on the 16 pen camera video; correct? 17 A. What now? 18 Q. You're most familiar with the timeline of events 19 and the words that appear on the pen camera 20 video? 21 A. Yes. 22 Q. How many times have you looked at that? 23 A. This (pointing to exhibit)? 24 Q. No. The pen camera video. 25 A. I don't know.</p>

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<p style="text-align: right;">110</p> <p>1 Q. More than 20?</p> <p>2 A. No.</p> <p>3 Q. How many times have you and your wife looked at</p> <p>4 it?</p> <p>5 A. Once.</p> <p>6 Q. Okay. When you went home that night on the 9th</p> <p>7 did you think that Smith was dead?</p> <p>8 A. No.</p> <p>9 Q. Did you think that Smith was dead when you told</p> <p>10 your wife that you and Jimi killed a guy?</p> <p>11 A. Based on the fact that I couldn't find a pulse.</p> <p>12 Q. So that's a "Yes"?</p> <p>13 A. Yes.</p> <p>14 Q. Had they resuscitated his heart by the time you</p> <p>15 left?</p> <p>16 A. I don't know. They were working on him.</p> <p>17 Q. Okay. You knew he'd been without a pulse or</p> <p>18 breath for a significant period of time;</p> <p>19 correct?</p> <p>20 A. I did not know how long he had been without a</p> <p>21 pulse or a breath.</p> <p>22 Q. I didn't -- well, you knew he'd been more than</p> <p>23 4 minutes without a pulse or breath, didn't you?</p> <p>24 A. No, I did not know that.</p> <p>25 Q. You never got a pulse or breath while you were</p>	<p style="text-align: right;">112</p> <p>1 used, but I didn't believe that we had caused</p> <p>2 his death.</p> <p>3 Q. Okay. What did you think he died from?</p> <p>4 A. I don't know.</p> <p>5 Q. Looking at Exhibit 30... Let's focus on the --</p> <p>6 after the Taser the things that you say.</p> <p>7 After you get him handcuffed you're on --</p> <p>8 you're straddling his buttock, upper thigh area;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. And Gorman's knee -- right knee is on his -- on</p> <p>12 Smith's back; correct?</p> <p>13 A. I think so.</p> <p>14 Q. And you say, "Stop." What is that referring to?</p> <p>15 A. Where are you looking at? First page?</p> <p>16 Q. The first thing you say after the tasing.</p> <p>17 A. I'm saying, "Stop" and -- to Mr. Smith.</p> <p>18 Q. Okay.</p> <p>19 A. To stop resisting.</p> <p>20 Q. All right. And then you say, "Punched me in the</p> <p>21 face" at 1:22; correct?</p> <p>22 A. I believe I said, "He punched me in the face."</p> <p>23 Q. All right. You said, "He punched me in the</p> <p>24 face"?</p> <p>25 A. Yeah, I believe so.</p>
<p style="text-align: right;">111</p> <p>1 administering CPR to him; correct?</p> <p>2 A. When I was checking?</p> <p>3 Q. Yeah.</p> <p>4 A. No.</p> <p>5 Q. And as far as you know the EMTs while they were</p> <p>6 there didn't get a pulse or breath, did they?</p> <p>7 A. No, I think they did get a pulse at some point.</p> <p>8 Q. At some point while --</p> <p>9 A. After they worked on him.</p> <p>10 Q. Before you left?</p> <p>11 A. I... I think so.</p> <p>12 Q. Okay. Well, you believed in your heart of</p> <p>13 hearts when you told your wife that you and Jimi</p> <p>14 killed a guy that he was dead, though; correct?</p> <p>15 A. No. I said I -- I thought that could be the</p> <p>16 case.</p> <p>17 Q. Well, you...</p> <p>18 A. And I didn't believe that at the time that we --</p> <p>19 the way that you're using the word "killed him."</p> <p>20 Q. I'm just talking about the way you used it.</p> <p>21 A. I know. That's not the way I meant it, the way</p> <p>22 that you're implying it.</p> <p>23 Q. Well, you wouldn't kid about that, would you,</p> <p>24 certainly not to your wife?</p> <p>25 A. No. It's just -- it was just a word that I</p>	<p style="text-align: right;">113</p> <p>1 MR. BENNETT: Give me Exhibit 31.</p> <p>2 MR. STORMS: (Complying.)</p> <p>3 BY MR. BENNETT:</p> <p>4 Q. "He punched me in the face." That's what the</p> <p>5 court reporter has, too.</p> <p>6 All right. And then, "Squad 110: We need a</p> <p>7 supervisor."</p> <p>8 And you would call -- you're supposed to</p> <p>9 call for a supervisor if you're using maximal</p> <p>10 restraint; correct?</p> <p>11 A. No. We notify a supervisor if we use force.</p> <p>12 Q. Well, Exhibit 24, paragraph 3, requires a</p> <p>13 supervisor be called; correct?</p> <p>14 A. Are you referring to maximal restraint again?</p> <p>15 Q. Yep.</p> <p>16 A. Let's see.</p> <p>17 (Reviewing exhibit.)</p> <p>18 I'm sure it does. It's -- maximal restraint</p> <p>19 would be considered force.</p> <p>20 Q. Okay. And then you said, "We need an ambulance</p> <p>21 right now. Start Ambulance Code 2." Correct?</p> <p>22 A. (Reviewing exhibit.)</p> <p>23 I -- are you saying that I said, "We need an</p> <p>24 ambulance right now" to Dispatch?</p> <p>25 Q. Yeah. Did -- didn't you say that?</p>

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<p style="text-align: right;">114</p> <p>1 A. No. I don't believe I did.</p> <p>2 Q. Did you say, "Do we need an ambulance for him"?</p> <p>3 A. I may have said that.</p> <p>4 Q. And Gorman says, "Yeah, probably"?</p> <p>5 A. Okay.</p> <p>6 Q. And an ambulance was started, Code 2; correct?</p> <p>7 A. Yes, I believe so.</p> <p>8 Q. Code 2 is "come when you can" basically?</p> <p>9 A. Code 2 is we need an ambulance to come, but they</p> <p>10 don't have to come with their lights and sirens</p> <p>11 on.</p> <p>12 Q. It's not an emergency?</p> <p>13 A. Yes.</p> <p>14 Q. Code 3 is an emergency; right?</p> <p>15 A. Yes.</p> <p>16 Q. So then the moaning and yelling starts. You see</p> <p>17 that -- at least that's -- and you heard him</p> <p>18 moaning or yelling, didn't you?</p> <p>19 A. Yes.</p> <p>20 Q. Did you do anything to check his pulse then?</p> <p>21 A. No.</p> <p>22 Q. Did you do... Did you talk about his moaning or</p> <p>23 yelling with Gorman?</p> <p>24 A. Not that I recall.</p> <p>25 Q. Did Gorman talk about his moaning or yelling</p>	<p style="text-align: right;">116</p> <p>1 during that period with Gorman?</p> <p>2 A. I don't think so.</p> <p>3 Q. Is there any manifestation in the audio or</p> <p>4 visual evidence that you've seen that indicates</p> <p>5 that you had any concern for Mr. Smith's welfare</p> <p>6 at all?</p> <p>7 A. I think there's one point where I said, "Is he</p> <p>8 breathing?"</p> <p>9 Q. All right. That's the first manifestation?</p> <p>10 A. I think so. It wasn't -- it wasn't a serious</p> <p>11 question.</p> <p>12 Q. All right. Why wasn't it a serious question?</p> <p>13 A. Because he just wasn't responding to us or</p> <p>14 talking to us, so I just made a comment, "Is he</p> <p>15 breathing?" But I wasn't concerned whether he</p> <p>16 was really breathing.</p> <p>17 Q. Well, if a person is nonresponsive that's a</p> <p>18 problem, isn't it?</p> <p>19 A. People are nonresponsive all the time and they</p> <p>20 don't talk to us when they don't want to.</p> <p>21 Q. And they don't talk to you if they're</p> <p>22 unconscious?</p> <p>23 MS. FUNDINGSLAND: Objection, --</p> <p>24 BY MR. BENNETT:</p> <p>25 Q. Correct?</p>
<p style="text-align: right;">115</p> <p>1 with you?</p> <p>2 A. Not that I recall.</p> <p>3 Q. Did you voice... As far as you know during that</p> <p>4 period Gorman's knee or knees are still on his</p> <p>5 back, Smith's back; correct?</p> <p>6 A. What now?</p> <p>7 Q. During the moaning and yelling, as described</p> <p>8 here in Exhibit 30, Gorman's knee or knees are</p> <p>9 still on his back; correct?</p> <p>10 A. I -- I wasn't paying attention.</p> <p>11 Q. Okay. Well, you didn't tell Gorman at any time</p> <p>12 to take his knee off his back, did you?</p> <p>13 A. Not that I -- no.</p> <p>14 Q. And as far as you were concerned him kneeling on</p> <p>15 Smith's back was acceptable to you?</p> <p>16 A. Yes.</p> <p>17 Q. All right. What police purpose was being</p> <p>18 accomplished by his knee being on -- Gorman's</p> <p>19 knee being on Smith's back?</p> <p>20 A. We were holding him down so that we didn't have</p> <p>21 to fight with him any further.</p> <p>22 Q. Did you do anything to check his breathing</p> <p>23 during the moaning or yelling period?</p> <p>24 A. No.</p> <p>25 Q. Did you talk about his health or welfare at all</p>	<p style="text-align: right;">117</p> <p>1 MS. FUNDINGSLAND: -- argumentative.</p> <p>2 BY MR. BENNETT:</p> <p>3 Q. And only a few of them talk to you while they're</p> <p>4 dead?</p> <p>5 MS. FUNDINGSLAND: Same objection.</p> <p>6 BY MR. BENNETT:</p> <p>7 Q. I mean they don't talk to you if they're dead</p> <p>8 either, do they?</p> <p>9 A. No.</p> <p>10 Q. Okay. So during this moaning or yelling period</p> <p>11 you did nothing to determine whether or not</p> <p>12 Mr. Smith was breathing; correct?</p> <p>13 A. No.</p> <p>14 Q. That's not correct? What did you do?</p> <p>15 A. No, I said I don't --</p> <p>16 Q. You --</p> <p>17 A. I mean no, I don't think we -- I don't think I</p> <p>18 did.</p> <p>19 Q. And nor did Gorman, to the best of your</p> <p>20 knowledge?</p> <p>21 A. I don't know.</p> <p>22 Q. When he was moaning or yelling did you think his</p> <p>23 breathing was distressed?</p> <p>24 A. No.</p> <p>25 Q. Did you see Gorman do anything during the</p>

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<p style="text-align: right;">118</p> <p>1 moaning or yelling period, from the time it</p> <p>2 started until the time it stops, did you see him</p> <p>3 do anything to check Smith's breathing or pulse?</p> <p>4 A. I don't think so.</p> <p>5 Q. All right. Did he appear to be fighting for</p> <p>6 breath when he was moaning and yelling?</p> <p>7 A. Not to me.</p> <p>8 Q. He never responds to any verbal discussion or</p> <p>9 any verbal talk of Gorman, does he?</p> <p>10 A. He only responded to us verbally one time.</p> <p>11 Q. When was that?</p> <p>12 A. Right before he punched me in the face.</p> <p>13 Q. What did he say?</p> <p>14 A. He smiled at me and said, "Do it."</p> <p>15 Q. All right. And what did that mean to you?</p> <p>16 A. I had just told him if he didn't stop resisting</p> <p>17 and get down on the ground I was going to tase</p> <p>18 him again.</p> <p>19 Q. All right. Then do you see the "GROANING" --</p> <p>20 on page 2 do you see the "GROANING"?</p> <p>21 A. Yes.</p> <p>22 Q. And that's what Baker refers to as sonorous, or</p> <p>23 agonal breathing, or the death rattle. He's</p> <p>24 called it all three things. Do you see that?</p> <p>25 A. It doesn't say what you said, but I see where</p>	<p style="text-align: right;">120</p> <p>1 here. Go to the first page.</p> <p>2 (Exhibit displayed.)</p> <p>3 BY MR. BENNETT:</p> <p>4 Q. He has it at 29 seconds, Dr. Baker. And this</p> <p>5 has it on something of the order of 24 seconds.</p> <p>6 But you heard him making those lower sounds</p> <p>7 on the videotape?</p> <p>8 A. Just now?</p> <p>9 Q. Yes.</p> <p>10 A. Yes.</p> <p>11 Q. And every time you've listened to it?</p> <p>12 A. Do I hear him making noises?</p> <p>13 Q. Yes.</p> <p>14 A. Yes.</p> <p>15 Q. Do you hear him making... Do you know what the</p> <p>16 sonorous breathing noises were? Do you remember</p> <p>17 those?</p> <p>18 A. Yes.</p> <p>19 Q. Had you ever heard those in any human being</p> <p>20 before?</p> <p>21 MS. FUNDINGSLAND: Objection, asked and</p> <p>22 answered.</p> <p>23 THE WITNESS: I probably have.</p> <p>24 MR. BENNETT: All right.</p> <p>25 BY MR. BENNETT:</p>
<p style="text-align: right;">119</p> <p>1 you're referring to the arrow with the</p> <p>2 "GROANING" on this exhibit.</p> <p>3 Q. And in Exhibit 15 it's "sonorous breathing";</p> <p>4 correct?</p> <p>5 A. I accept that that's what you're saying, yeah.</p> <p>6 Q. And he also calls it "agonal" in the Ombudsman</p> <p>7 Report and his testimony.</p> <p>8 Do you know what "agonal breathing" is?</p> <p>9 A. I accept that those are the terms that you are</p> <p>10 using, yes.</p> <p>11 Q. And that those are synonymous with "death</p> <p>12 rattle"?</p> <p>13 A. Okay.</p> <p>14 Q. All right. Well, while he's doing that,</p> <p>15 groaning here, sonorous breathing, agonal or</p> <p>16 death rattle, no matter what you call it, --</p> <p>17 A. Okay.</p> <p>18 Q. -- it lasts for a period of something like</p> <p>19 24 seconds, 25 seconds.</p> <p>20 A. Okay.</p> <p>21 Q. Exhibit 15 shows a...</p> <p>22 MR. BENNETT: Can you go back and forth</p> <p>23 very easily?</p> <p>24 (Exhibit displayed.)</p> <p>25 MR. BENNETT: Okay. Let me just see it</p>	<p style="text-align: right;">121</p> <p>1 Q. In this time, though, you -- you're talking</p> <p>2 about -- during the period -- at least on</p> <p>3 exhibit -- you -- you -- instead of responding</p> <p>4 to that breathe -- that sound, you are talking</p> <p>5 about what kind of drugs he might have been on,</p> <p>6 whether -- you can't believe he punched you in</p> <p>7 the face. And that he -- you know, you're</p> <p>8 having a discussion about that and -- and such;</p> <p>9 correct?</p> <p>10 A. Yes.</p> <p>11 Q. All right. Again, is there any manifestation</p> <p>12 of -- on your part for care for David Smith?</p> <p>13 A. I did not recognize through the noises that</p> <p>14 you're indicating that there was reason to check</p> <p>15 on him.</p> <p>16 Q. All right. You did not check on his breathing</p> <p>17 or pulse in that period, did you?</p> <p>18 A. No.</p> <p>19 Q. And... Nor did Gorman to the best of your</p> <p>20 knowledge?</p> <p>21 A. I don't know. I don't think so.</p> <p>22 Q. Well, he's right in front of you. Did you see</p> <p>23 him?</p> <p>24 A. I don't think so.</p> <p>25 Q. Okay. And -- and then the agonal breathing</p>

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<p style="text-align: right;">122</p> <p>1 stops. And did you hear any other sounds from</p> <p>2 him after that at all?</p> <p>3 A. I don't know.</p> <p>4 Q. You don't remember?</p> <p>5 A. I don't.</p> <p>6 Q. Dr. Baker said that he did not. I'm just trying</p> <p>7 to find out: Did you hear any sounds? I didn't</p> <p>8 hear any on the tape. Did you -- do you</p> <p>9 remember any?</p> <p>10 A. I don't recall at the time if... If...</p> <p>11 Q. And again, after the groaning stops you're</p> <p>12 thinking about what you can charge him for;</p> <p>13 right? How many times you were tased?</p> <p>14 MS. FUNDINGSLAND: Object to the form of</p> <p>15 the question.</p> <p>16 THE WITNESS: (Pausing.)</p> <p>17 Can you repeat it?</p> <p>18 BY MR. BENNETT:</p> <p>19 Q. Well, during this time after the -- his -- the</p> <p>20 -- what -- the involuntary breathing, or</p> <p>21 sonorous breathing, or agonal breathing, or</p> <p>22 death rattle stops, you talk about -- about how</p> <p>23 many times you tased him? You and Gorman talk</p> <p>24 about that; correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">124</p> <p>1 A. Between when and when?</p> <p>2 Q. 3:25 and 5:29. And I'm not vouching for the</p> <p>3 times, but that -- that shows the amount of</p> <p>4 elapsed time.</p> <p>5 A. I don't believe I did.</p> <p>6 Q. Okay. Did you observe Gorman do anything to</p> <p>7 determine his breathing or pulse?</p> <p>8 A. I don't believe so.</p> <p>9 Q. What was your response to his</p> <p>10 non-responsiveness?</p> <p>11 A. When?</p> <p>12 Q. What did do you? When -- when you say, "Are you</p> <p>13 going to talk to us, man? Hey, are you going to</p> <p>14 talk to us? What's wrong with you?" And he</p> <p>15 doesn't say anything. Do you do anything other</p> <p>16 than remain seated on him?</p> <p>17 MS. FUNDINGSLAND: Object to the form of</p> <p>18 the question.</p> <p>19 THE WITNESS: I was under the impression</p> <p>20 at that time that he was simply ignoring us.</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. Well, he wasn't trying to get up, was he?</p> <p>23 A. No, he wasn't.</p> <p>24 Q. And this was long past when you say in your</p> <p>25 statement to Sergeant Klund and Sergeant Fors</p>
<p style="text-align: right;">123</p> <p>1 Q. The knee is still on the back according to the</p> <p>2 videotape?</p> <p>3 A. Okay.</p> <p>4 Q. And then you say, "Are you going to talk to us,</p> <p>5 man? Hey, are you going to talk to us? What's</p> <p>6 wrong with you?"</p> <p>7 And he doesn't respond at all, does he?</p> <p>8 A. No.</p> <p>9 Q. And you don't even -- you don't hear him</p> <p>10 breathing at this point? You don't hear any</p> <p>11 sound from him at all?</p> <p>12 A. He's not responding, no.</p> <p>13 Q. Okay. And at that point you're still sitting on</p> <p>14 him and Gorman is still on his back?</p> <p>15 A. I'm still sitting on his lower, ah, extremities,</p> <p>16 yes.</p> <p>17 Q. And when Gorman -- Gorman says to you, "That was</p> <p>18 a hell of a fight"; right?</p> <p>19 A. Somewhere he does, yes.</p> <p>20 Q. Yeah. You -- you two are talking to each other</p> <p>21 while you're on David Smith; correct?</p> <p>22 A. Yes.</p> <p>23 Q. Did you do anything between 3:25 and 5:29,</p> <p>24 according to Exhibit 30, to check on his</p> <p>25 breathing or pulse?</p>	<p style="text-align: right;">125</p> <p>1 that he'd been handcuffed and had calmed down a</p> <p>2 bit. Was not resisting as hard. It was a long</p> <p>3 time after that; correct?</p> <p>4 A. I don't know how -- exactly how long.</p> <p>5 Q. Well, this was... If he's handcuffed at --</p> <p>6 A. We're talking a matter of --</p> <p>7 Q. 4 or 5 minutes.</p> <p>8 A. -- minutes.</p> <p>9 Not a long time, but a matter of minutes.</p> <p>10 Q. Well, if you're not getting air it's a long time</p> <p>11 I suppose. I guess it's all...</p> <p>12 It's a matter of 5 or 6 minutes, though,</p> <p>13 isn't it?</p> <p>14 A. I don't know the exact number of minutes.</p> <p>15 Q. What was the police purpose for staying on top</p> <p>16 of him after he'd calmed down a bit and was not</p> <p>17 resisting as hard?</p> <p>18 MS. FUNDINGSLAND: Objection,</p> <p>19 repetitious.</p> <p>20 THE WITNESS: Because he had indicated</p> <p>21 with his past behavior that he could pretend to</p> <p>22 be done and then lash out.</p> <p>23 BY MR. BENNETT:</p> <p>24 Q. Well, how could... When did he pretend to be</p> <p>25 done and lash out?</p>

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<p style="text-align: right;">126</p> <p>1 A. After he was tased the first time. When he 2 stood up. And then he was -- he seemed to be 3 calmer at that point. 4 Q. Okay. So that was -- that was the police 5 purpose for -- for not letting him give up 6 basically and continuing to restrain him? 7 MS. FUNDINGSLAND: Objection, 8 repetitious. 9 BY MR. BENNETT: 10 Q. Well, you're supposed to stop using force if he 11 gives up; right? 12 A. We did stop using force. 13 Q. Okay. You don't think your sitting on him 14 and -- and Gorman's kneeling on his back is 15 using force, is that what you're saying? 16 A. In the same manner that his hands were 17 handcuffed behind his back is force. 18 If you're going to equate that with force, 19 then his handcuffs being behind his back were 20 force, as well. 21 Q. Well, you understand that he was killed by 22 mechanical asphyxia and the force of the 23 mechanical asphyxia is that which is driving him 24 to the floor and stopping him from breathing; do 25 you understand that?</p>	<p style="text-align: right;">128</p> <p>1 foundation. 2 BY MR. BENNETT: 3 Q. I mean wouldn't you expect that he would... 4 Well, you two were both huffing and puffing, 5 weren't you? You can hear you. 6 A. Yes. 7 Q. Okay. He had been in a confrontation with both 8 of you; correct? 9 A. Yes. 10 Q. He'd been tased five times? 11 A. Yes. 12 Q. You understood that he would probably be sucking 13 for air, too, wouldn't you? 14 A. I would assume. 15 Q. Okay. Yeah. I mean you're taught about factors 16 that can complicate arrest situations and 17 restraint; correct? 18 A. For instance, in the maximal restraint, yes. 19 Q. Well, you're taught -- and you're taught 20 generally that all -- that -- you're taught to 21 avoid certain things if a person is mentally 22 ill, if they've had neuromuscular disruption, if 23 they've been in a ground fight, that sort of 24 thing; correct? All of those are factors that 25 complicate arrests and you have to be sure that</p>
<p style="text-align: right;">127</p> <p>1 MS. FUNDINGSLAND: Objection, 2 repetitious. 3 THE WITNESS: We were restraining him to 4 prevent any further fighting. 5 MR. BENNETT: And that you did. 6 MS. FUNDINGSLAND: Objection, -- 7 BY MR. BENNETT: 8 Q. When was the last -- 9 MS. FUNDINGSLAND: -- argumentative. 10 BY MR. BENNETT: 11 Q. When was the last time he actually did anything 12 that you could construe as fighting with you? 13 A. I don't know. 14 Q. Was it after he was handcuffed? 15 A. No. 16 Q. He didn't fight with you after he was 17 handcuffed, did he? 18 A. He was moving around after he was handcuffed. 19 Q. That's not fighting with you, is it? 20 A. Well, it's... When someone is sitting on your 21 legs and someone is on your upper torso, it's 22 hard to move around, but he was moving around. 23 Q. Well, wouldn't he be moving around, trying to 24 get a breath? 25 MS. FUNDINGSLAND: Objection,</p>	<p style="text-align: right;">129</p> <p>1 the person doesn't -- doesn't get hurt or expire 2 on your watch? 3 A. No. 4 Q. Okay. All right. When you first say, "Is he 5 breathing?" Do you do anything to determine 6 whether he's breathing? 7 A. No. As I said before, I didn't -- that was not 8 a serious question. 9 Q. It wasn't? 10 A. (Pausing.) 11 Q. Why? 12 A. Because I thought he was breathing. 13 Q. How did you... Why did you think he was 14 breathing? 15 A. I just assumed he was breathing. 16 Q. Okay. 17 A. I've never had a situation like this before 18 where somebody wasn't breathing. 19 Q. And then you go on to talk about, "My jaw hurts 20 on this side." Correct? 21 A. Yes. 22 Q. You're still straddling him when you say, "Is he 23 breathing?" 24 A. Yes. 25 Q. You're still straddling him when he [sic] says,</p>

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<p style="text-align: right;">130</p> <p>1 "My jaw hurts on this side?"</p> <p>2 A. Yes.</p> <p>3 Q. When you say, "Well, I hope we're not going to</p> <p>4 wait for somebody to get done with roll call,"</p> <p>5 what do you mean?</p> <p>6 A. Well, we weren't going anywhere until a</p> <p>7 supervisor got to the scene. I didn't want to</p> <p>8 wait any longer than was necessary.</p> <p>9 Q. Wait to do what?</p> <p>10 A. Have a supervisor come to the scene.</p> <p>11 Q. So you didn't want them to wait until after the</p> <p>12 supervisor was done with roll call? That's what</p> <p>13 you meant?</p> <p>14 A. Well, I know how long roll calls sometimes go.</p> <p>15 I didn't want to have to wait 15 or 20 minutes.</p> <p>16 I was hoping a supervisor would respond</p> <p>17 immediately.</p> <p>18 Q. And the reason you didn't want to wait was</p> <p>19 because you had to get home to take care of the</p> <p>20 kids?</p> <p>21 A. No, not at that point.</p> <p>22 Q. Okay. Well, why didn't -- then what difference</p> <p>23 would it have made?</p> <p>24 A. I didn't see it necessary to wait for a</p> <p>25 supervisor to finish roll call. I was hoping</p>	<p style="text-align: right;">132</p> <p>1 Q. You're talking about this getting punched and</p> <p>2 the fight you had; correct?</p> <p>3 A. Yes.</p> <p>4 Q. And he says, "Neither did I"?</p> <p>5 A. Yes.</p> <p>6 Q. And you say, "I can't bite down. Mother fucker,</p> <p>7 you better not have broke my fucking jaw."</p> <p>8 You're referring to David Smith as the</p> <p>9 "mother fucker" there?</p> <p>10 A. Yes.</p> <p>11 Q. During this interlude, when you're having this</p> <p>12 discussion, did you do anything to check and see</p> <p>13 if David Smith was breathing?</p> <p>14 A. No.</p> <p>15 Q. If he had a pulse?</p> <p>16 A. I don't -- I don't recall --</p> <p>17 Q. Did you care if he was breathing or had a pulse</p> <p>18 at that time?</p> <p>19 A. I assumed that he was breathing and had a</p> <p>20 pulse --</p> <p>21 Q. That --</p> <p>22 A. -- at that time.</p> <p>23 Q. -- isn't the question.</p> <p>24 A. Did I care?</p> <p>25 Q. Yeah.</p>
<p style="text-align: right;">131</p> <p>1 that they would come right away.</p> <p>2 Q. Then at 6:05 you say, "My jaw hurts on this</p> <p>3 side," and Gorman responds seconds later with,</p> <p>4 "The whole right side of your face is all red."</p> <p>5 And then you say, "Oh, mother fucker."</p> <p>6 What's that about?</p> <p>7 A. I was angry about getting punched in the face.</p> <p>8 Q. Okay. And he asked --</p> <p>9 A. I was in pain.</p> <p>10 Q. And he says, "Is that fully charged?" He's</p> <p>11 talking about the Taser?</p> <p>12 A. I don't know. I think... Possibly. I'm</p> <p>13 assuming that's probably what he meant.</p> <p>14 Q. And you said, "Oh, yeah"?</p> <p>15 A. Well... Okay.</p> <p>16 Q. And then you say, "Oh, fuck." Do you know</p> <p>17 what --</p> <p>18 A. That's --</p> <p>19 Q. -- you're talking about?</p> <p>20 A. That was in response to the pain in my jaw.</p> <p>21 Q. Okay. And Gorman says, "You should get looked</p> <p>22 at by an ambulance." And you respond, "I did</p> <p>23 not expect that." And you're talking about</p> <p>24 there the --</p> <p>25 A. Getting punched.</p>	<p style="text-align: right;">133</p> <p>1 A. Yes, I cared.</p> <p>2 Q. Did you do anything physically to manifest that</p> <p>3 care that shows that -- that's evidence of any</p> <p>4 care about whether he had a pulse or he had a</p> <p>5 breathing --</p> <p>6 A. I did not because I thought he was.</p> <p>7 Q. Okay. Did you see... Could you see his eyes?</p> <p>8 A. I could not.</p> <p>9 Q. That's because Smith -- that's because Gorman</p> <p>10 was in the way?</p> <p>11 A. I was too far away from his head.</p> <p>12 Q. Well, he was only 5-9 or so, wasn't he?</p> <p>13 A. Yes. His head was turned away from me. I was</p> <p>14 too far away to see over the top of him.</p> <p>15 Q. And then at 7:09 you say, "Hey, talk to us man."</p> <p>16 He doesn't; correct?</p> <p>17 A. He does not.</p> <p>18 Q. Do you do anything in response to that?</p> <p>19 A. Hmm. I -- at -- that's -- at that point that</p> <p>20 I'm concerned for his well-being.</p> <p>21 Q. At the 7 plus minute mark?</p> <p>22 A. Yes.</p> <p>23 Q. But you didn't take his pulse or -- or determine</p> <p>24 if he was breathing until about a minute later;</p> <p>25 correct? 50 seconds later?</p>

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<p>1 A. No. When I asked for an ambulance to go -- for 2 Ambulance Code 3 I was concerned that he was -- 3 whether he was breathing. I didn't -- I don't 4 think it took a minute. 5 Q. 7:44 it says, "Dude, talk to me." And then 6 you -- then you -- we looked at that on the -- 7 on -- on the video. That's when you checked his 8 wrist? That's the first time, isn't it, on the 9 video? 10 A. Oh, I -- okay. 11 Q. Well, is it? 12 A. I don't know. Without watching the video and 13 seeing it I don't... 14 Q. Do you remember -- 15 A. I know -- 16 Q. Did you -- 17 A. I remember what you're referring to. 18 Q. All right. Is that the first time that the 19 video shows you checking his pulse? 20 A. I think so. 21 Q. Okay. And then you yell at Gorman about 22 10 seconds later, "Gorman. Gorman. Dude, I 23 don't think he's breathing." "Dude" I think is 24 referring to Gorman; right? 25 A. I think so.</p>	<p>1 Q. As far as you know Gorman knelt on Smith's back 2 and that was a voluntary and conscious decision 3 on his part? 4 A. Yes. 5 Q. And you observed it happening in front of you 6 and voiced no displeasure in it? 7 A. Yes. 8 Q. Never told him not to do it? 9 A. Yes. 10 Q. You didn't signal with your hand not to do it? 11 A. No. 12 Q. Your choice of language to direct at him was -- 13 to refer to him as a "mother fucker," that was 14 volitional and conscious on your part? 15 A. Yes. 16 Q. And indicated you were angry with him, as you 17 indicated? 18 A. Say that again. 19 Q. You called him a "mother fucker" because you 20 were angry with him; correct? 21 A. I was angry about being punched by -- 22 Q. Well, he was the person that punched you and it 23 was to him -- 24 A. Yeah, but it wasn't a personal thing for me. 25 Q. Well, you were calling him the "mother fucker";</p>
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<p>1 Q. And then at 8:11 you flip Smith over onto his 2 back. 3 A. Okay. 4 Q. And is that when you check the carotid pulse? 5 A. I think so. 6 Q. All right. So from... It's about... Let's say 7 you get it at close to the 1-minute mark. 8 There's 8 minutes that you're on his back, that 9 you're seated on him? 10 A. Um... Yes. 11 Q. And Gorman is on his back a little less time 12 than you're seated on him; correct? 13 A. I don't know the exact amount of time. Less 14 time than me. 15 Q. Okay. You never placed David Smith on his side 16 at all, did you? 17 A. No. 18 Q. You voluntarily chose to keep David Smith prone, 19 chest down on the floor with your weight on him 20 and with your acquiescence in Officer Gorman 21 keeping his weight on him; correct? 22 A. Yes. 23 Q. As far as you know Gorman made the volitional 24 and conscious choice to kneel on Smith's back? 25 A. Yeah -- what now?</p>	<p>1 correct? 2 A. I used the term "mother fucker," yes. 3 Q. And Gorman called him "a fucking mope." 4 A. I don't recall that. 5 Q. Okay. Do you know what "a fucking mope" is? 6 A. No. 7 Q. Do you know what... You don't know what -- 8 A. It's on this Taser video transcript, but it's 9 not on this one, -- 10 Q. Yeah. 11 A. -- from the pen camera. 12 Q. You're right. 13 A. So I don't recall him saying that. 14 Q. Okay. You'd agree that no one checked Smith's 15 breathing for a period of several minutes after 16 he was handcuffed; correct? 17 A. Pardon? 18 Q. No one checked Smith's breathing for a period of 19 several minutes after he was handcuffed; 20 correct? 21 A. I didn't think it was necessary. He was yelling 22 and screaming. That indicated to me that he was 23 breathing. 24 Q. Do you have any quarrel with how Dr. Baker 25 categorized his sounds?</p>

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<p>1 A. No.</p> <p>2 Q. Did he yell or scream any words?</p> <p>3 A. No.</p> <p>4 Q. He never -- and you talked to him after he made</p> <p>5 the sounds that Dr. Baker talked about; correct?</p> <p>6 A. He -- say again.</p> <p>7 Q. After -- after Dr. Baker's characterization of</p> <p>8 his sounds, --</p> <p>9 A. Uh-huh.</p> <p>10 Q. -- voluntary and involuntary and sonorous, you</p> <p>11 tried to talk to him and so did Officer Gorman?</p> <p>12 A. Yes.</p> <p>13 Q. No response; correct?</p> <p>14 A. No.</p> <p>15 Q. The --</p> <p>16 A. No verbal response.</p> <p>17 Q. The not checking his breathing for several</p> <p>18 minutes after he was handcuffed is something you</p> <p>19 either chose -- you chose not to do that</p> <p>20 voluntarily; correct?</p> <p>21 A. I did not think it was necessary.</p> <p>22 Q. Well, do you think it was now?</p> <p>23 A. Well, I -- I --</p> <p>24 Q. Do you think it was necessary?</p> <p>25 A. I can't answer it that way now because it was --</p>	<p>1 Q. So did you just make that up?</p> <p>2 A. I was giving you a --</p> <p>3 Q. Example?</p> <p>4 A. -- possibility, yes.</p> <p>5 MR. BENNETT: Now I want to play...</p> <p>6 What exhibit is the embedded?</p> <p>7 THE WITNESS: Just before you...</p> <p>8 Can I --</p> <p>9 MR. BENNETT: Sure.</p> <p>10 THE WITNESS: -- use the bathroom?</p> <p>11 MR. BENNETT: Absolutely. I'm just</p> <p>12 waiting for you to tell me.</p> <p>13 THE WITNESS: Okay.</p> <p>14 MR. BENNETT: And you need to do that.</p> <p>15 (Discussion held off the record.)</p> <p>16 MR. BENNETT: Off the record at 11:42.</p> <p>17 (Recess taken.)</p> <p>18 MR. BENNETT: On the record now at --</p> <p>19 I've got 11:54.</p> <p>20 And the record can reflect -- oh, cripe.</p> <p>21 Am I still hooked up to audio?</p> <p>22 VIDEOGRAPHER: Yes.</p> <p>23 MR. BENNETT: That we're looking at an</p> <p>24 embed of the Taser video onto the...</p> <p>25 Come on up here if you want to, Lynne.</p>
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<p>1 I can only answer the way it was happening at</p> <p>2 the time.</p> <p>3 Q. Did you --</p> <p>4 A. I didn't think he was having trouble breathing.</p> <p>5 Q. Do you think you neglected to do that in</p> <p>6 violation of your training and policy?</p> <p>7 A. No.</p> <p>8 Q. Did you see Gorman strike Smith in the head</p> <p>9 several times after he'd been handcuffed?</p> <p>10 A. No.</p> <p>11 Q. Did you see him strike him in the head at all</p> <p>12 after he was handcuffed?</p> <p>13 A. I wouldn't classify what you're referring to as</p> <p>14 a strike.</p> <p>15 Q. What would you call it?</p> <p>16 A. A distracting tap on the head. It certainly</p> <p>17 wasn't a blow.</p> <p>18 Q. What was its police purpose?</p> <p>19 A. Sometimes we use distracting techniques.</p> <p>20 Q. To distract him from what?</p> <p>21 A. I don't know what Officer Gorman was concerned</p> <p>22 about. Perhaps Smith's mouth was getting close</p> <p>23 to his leg in a bite. I don't know.</p> <p>24 Q. Gorman never told you that, did he?</p> <p>25 A. I -- no.</p>	<p>1 MS. FUNDINGSLAND: Yeah, because the</p> <p>2 glare back there is too tough.</p> <p>3 MR. BENNETT: Okay.</p> <p>4 MS. FUNDINGSLAND: Yeah.</p> <p>5 MR. BENNETT: You might even want to</p> <p>6 come on this side with me. And you -- it's just</p> <p>7 a little -- I don't get that glare on the Taser</p> <p>8 video.</p> <p>9 MS. FUNDINGSLAND: Oh, okay.</p> <p>10 MR. STORMS: And we're identifying</p> <p>11 Exhibit 35.</p> <p>12 MR. BENNETT: 35.</p> <p>13 MS. FUNDINGSLAND: Does he have enough</p> <p>14 room, though?</p> <p>15 VIDEOGRAPHER: I'm fine. Don't worry</p> <p>16 about me.</p> <p>17 MS. FUNDINGSLAND: Okay.</p> <p>18 MR. BENNETT: The reason we did this</p> <p>19 many cameras is to make sure we've got a shot.</p> <p>20 MS. FUNDINGSLAND: Okay.</p> <p>21 MR. BENNETT: All right.</p> <p>22 Go ahead and play it, Kate.</p> <p>23 (Viewing video.)</p> <p>24 BY MR. BENNETT:</p> <p>25 Q. There's -- and there's the hit? That you get</p>

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<p style="text-align: right;">142</p> <p>1 hit; right?</p> <p>2 A. Yes.</p> <p>3 Q. You don't see much on the Taser video right now,</p> <p>4 do you?</p> <p>5 A. No.</p> <p>6 Q. The tape... And now you're in the process of</p> <p>7 getting the handcuffs ready and on, the</p> <p>8 handcuffing process?</p> <p>9 A. Yes.</p> <p>10 Q. Okay.</p> <p>11 (Viewing of video continues.)</p> <p>12 BY MR. BENNETT:</p> <p>13 Q. And you step over...</p> <p>14 MR. BENNETT: Stop it, if you can.</p> <p>15 (Viewing of video ends.)</p> <p>16 BY MR. BENNETT:</p> <p>17 Q. This is when you're on his left side and you</p> <p>18 step over with your right knee and get into the</p> <p>19 straddle position we've talked about.</p> <p>20 Is that depicted in the Taser --</p> <p>21 A. Yes.</p> <p>22 Q. -- video?</p> <p>23 A. Yes.</p> <p>24 Q. And this is your boot?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">144</p> <p>1 (Viewing of video continues.)</p> <p>2 BY MR. BENNETT:</p> <p>3 Q. And then you see both knees on him, don't you,</p> <p>4 in the Taser --</p> <p>5 A. I don't know.</p> <p>6 Q. You don't know what that is?</p> <p>7 A. I don't know if both knees are on there.</p> <p>8 Q. Okay.</p> <p>9 A. I can clearly see that one knee is on there</p> <p>10 right now. Because there's a gap right now</p> <p>11 (pointing to screen).</p> <p>12 (Viewing of videotape continues.)</p> <p>13 BY MR. BENNETT:</p> <p>14 Q. Okay. Do you see him kneeling on him now, right</p> <p>15 in the Taser video?</p> <p>16 A. With one.</p> <p>17 Q. Yeah. Okay.</p> <p>18 (Playing of videotape continues.)</p> <p>19 MR. BENNETT: Turn it up a little.</p> <p>20 MR. STORMS: (Adjusting audio.)</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. You hear the agonal breathing or the --</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And you're both on him then?</p> <p>25 A. Yes. I don't know. I don't know where --</p>
<p style="text-align: right;">143</p> <p>1 Q. And lower leg.</p> <p>2 Your knees just a little off camera; right?</p> <p>3 A. Yes.</p> <p>4 Q. And then this is the upper leg coming back to</p> <p>5 your buttocks here?</p> <p>6 A. Yes.</p> <p>7 Q. All right. And then we're going to look through</p> <p>8 on this area and I want -- tell me when you see</p> <p>9 -- when you see Officer Gorman.</p> <p>10 MR. STORMS: And, Bob, just for a time</p> <p>11 marker it might be helpful to state that the</p> <p>12 pen camera time is reflecting 05:04:03 --</p> <p>13 MR. BENNETT: Correct.</p> <p>14 MR. STORMS: -- during this still.</p> <p>15 MR. BENNETT: Thank you.</p> <p>16 Go ahead.</p> <p>17 (Viewing video.)</p> <p>18 BY MR. BENNETT:</p> <p>19 Q. Do you see that -- Gorman's knee on his back in</p> <p>20 both views; correct?</p> <p>21 A. Yes.</p> <p>22 (Viewing of video continues.)</p> <p>23 BY MR. BENNETT:</p> <p>24 Q. At 5:04:10, something like that?</p> <p>25 A. (No response.)</p>	<p style="text-align: right;">145</p> <p>1 (Viewing of video continues.)</p> <p>2 BY MR. BENNETT:</p> <p>3 Q. Does he have both knees on him now?</p> <p>4 A. I don't think so.</p> <p>5 Q. All right.</p> <p>6 (Viewing of video continues.)</p> <p>7 BY MR. BENNETT:</p> <p>8 Q. Then you move the wires with your left hand?</p> <p>9 A. I guess so.</p> <p>10 Q. Why did you do that?</p> <p>11 A. I don't know.</p> <p>12 (Viewing of video continues.)</p> <p>13 BY MR. BENNETT:</p> <p>14 Q. That's you; right?</p> <p>15 A. That's me.</p> <p>16 Q. Yep.</p> <p>17 (Viewing of video continues.)</p> <p>18 BY MR. BENNETT:</p> <p>19 Q. You got no response to that; right?</p> <p>20 A. No.</p> <p>21 Q. His head doesn't move from that position, does</p> <p>22 it?</p> <p>23 A. I don't think so.</p> <p>24 MR. STORMS: At 05:07:40.</p> <p>25 MR. BENNETT: 40.</p>

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<p style="text-align: right;">146</p> <p>1 (Viewing of video continues.)</p> <p>2 BY MR. BENNETT:</p> <p>3 Q. You see the knee between the scapulas; correct?</p> <p>4 A. I saw a knee on his shoulder, yeah.</p> <p>5 Q. Well, the shoulder is not -- not -- is not where</p> <p>6 his spine is, is it?</p> <p>7 A. It's on -- one -- the -- let's see. Right side</p> <p>8 of his back.</p> <p>9 (Viewing of video continues.)</p> <p>10 BY MR. BENNETT:</p> <p>11 Q. Is he still on his back then?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay.</p> <p>14 (Viewing of video ends.)</p> <p>15 BY MR. BENNETT:</p> <p>16 Q. Let's do the -- showing you Exhibit 48, that's a</p> <p>17 posterior view of the scapula. And Dr. Baker</p> <p>18 indicates that his view of it is he's kneeling</p> <p>19 between the scapula, the two scapulas. Is yours</p> <p>20 different than that?</p> <p>21 A. I don't -- are you indicating that he was --</p> <p>22 that --</p> <p>23 Q. These scapula -- these are scapula bones; that</p> <p>24 is, the two --</p> <p>25 A. Shoulder blades.</p>	<p style="text-align: right;">148</p> <p>1 Q. Okay.</p> <p>2 MR. BENNETT: Play the... Can we have</p> <p>3 the clip that says, "Is he breathing?" That</p> <p>4 one.</p> <p>5 MS. BENNETT: (Pointing to document.)</p> <p>6 MR. BENNETT: Yeah.</p> <p>7 I'm going to play this clip for you.</p> <p>8 (Viewing video.)</p> <p>9 BY MR. BENNETT:</p> <p>10 Q. And you say that's just a joke?</p> <p>11 A. No, I'm not saying it was a joke.</p> <p>12 (Viewing of video ends.)</p> <p>13 BY MR. BENNETT:</p> <p>14 Q. It's something you should be concerned about,</p> <p>15 isn't it?</p> <p>16 A. I was not concerned at that point that he was</p> <p>17 breathing. I was just making a statement and it</p> <p>18 wasn't -- it wasn't a serious statement.</p> <p>19 Q. Well, it -- you should be concerned with every</p> <p>20 person you arrest, about whether they're</p> <p>21 breathing. You've already said that that was</p> <p>22 true; correct?</p> <p>23 MS. FUNDINGSLAND: Objection, asked and</p> <p>24 answered.</p> <p>25 BY MR. BENNETT:</p>
<p style="text-align: right;">147</p> <p>1 Q. Yeah.</p> <p>2 A. Yep.</p> <p>3 Q. These are the shoulders blades, the big --</p> <p>4 A. Uh-huh.</p> <p>5 Q. -- bones that look like blades and his knee was</p> <p>6 between there. Do you have any -- do you have</p> <p>7 any disagreement with that?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. So you disagree with -- you saw that, but</p> <p>10 you didn't see him --</p> <p>11 A. I'm going from what we just watched.</p> <p>12 Q. You didn't see the -- between the scapula; is</p> <p>13 that correct?</p> <p>14 A. I think he was on the right side of his back.</p> <p>15 Q. With which knee, the left knee or the right</p> <p>16 knee?</p> <p>17 A. I don't recall. Which one we were just</p> <p>18 watching. I don't know.</p> <p>19 Q. Well, he switched, didn't he?</p> <p>20 A. He may have.</p> <p>21 Q. He started out on his right knee. And then you</p> <p>22 saw the picture in the YMCA video of him with</p> <p>23 his left knee on him; correct?</p> <p>24 A. That would indicate to me that he moved around.</p> <p>25 Wasn't there constantly.</p>	<p style="text-align: right;">149</p> <p>1 Q. Were you concerned that he was breathing?</p> <p>2 A. No.</p> <p>3 Q. Should you have been concerned that he was</p> <p>4 breathing?</p> <p>5 A. It would not be normal for me to check on</p> <p>6 somebody -- it's not a normal course of what I</p> <p>7 would do after arresting someone or fighting</p> <p>8 with them.</p> <p>9 Q. How many --</p> <p>10 A. I've never encountered that situation before.</p> <p>11 Q. Well, you tell me what's normal. Would it be</p> <p>12 normal for you to straddle somebody's back while</p> <p>13 another officer sits on his -- or straddle his</p> <p>14 buttocks, while another officer kneels on his</p> <p>15 back?</p> <p>16 A. Yes, it would.</p> <p>17 Q. It would? How long do you do that for usually?</p> <p>18 How many minutes?</p> <p>19 A. I don't know.</p> <p>20 Q. That's normal?</p> <p>21 A. After fighting with someone and holding them</p> <p>22 down, that's normal.</p> <p>23 Q. It is? Did you tell Fors and Klund that that</p> <p>24 was normal?</p> <p>25 A. Why would -- I don't think I was asked that.</p>

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<p style="text-align: right;">150</p> <p>1 Q. Well, you didn't even tell Fors and Klund where 2 Gorman was in your statement, did you? 3 A. I don't think I was asked. 4 In a statement like that I give -- I tell 5 what -- what I did. 6 Q. On Exhibit 37 you say -- on page 5 you say that, 7 "I could see that Smith was breathing heavily." 8 A. Which one is 37? Is that my statement? 9 Q. Your statement. 10 A. Okay. 11 Q. Page 5. 12 A. Page 5. All right. 13 Q. You said, "I was also breathing heavily trying 14 to catch my breath after the fight." 15 A. Yes. 16 Q. So breathing was -- you were concerned about 17 yours and you made some observation of his; 18 correct? 19 A. No. 20 Q. Well, you said, "I could see that Smith was 21 breathing heavily." Isn't that -- 22 A. Well, my answer is I wasn't concerned about my 23 own breathing. 24 Q. Okay. 25 A. I only know that I had exerted myself and I was</p>	<p style="text-align: right;">152</p> <p>1 BY MR. BENNETT: 2 Q. So when you asked... 3 MR. BENNETT: Go back to that clip, the 4 are-you-breathing clip again. 5 (Viewing video.) 6 BY MR. BENNETT: 7 Q. Did you want to -- 8 MR. BENNETT: Stop it. 9 (Viewing of video ended.) 10 BY MR. BENNETT: 11 Q. Did you want an answer to that question? 12 A. It was a rhetorical question, to be honest. 13 Q. Rhetorical. 14 A. If I'm using that term correctly. 15 Q. Well, it wasn't... I mean wouldn't... 16 And you had done nothing to check his 17 breathing up to that point, Smith's breathing? 18 That's right, isn't it? 19 A. That's correct. 20 Q. You're still on his back and Gorman is still on 21 his back? 22 A. Yep. 23 Q. Did you ever show Gorman the pen video? 24 A. I don't recall -- he -- he saw it. I don't 25 recall when.</p>
<p style="text-align: right;">151</p> <p>1 breathing heavily, but I wasn't concerned that I 2 was going to stop breathing. 3 Q. All right. Well, you thought he was resting; is 4 that right? 5 A. That is the term that I used. 6 Q. But why would you stay on top of him if he was 7 resting? 8 A. Because, as I said before, he had already 9 exhibited behavior that would lead me to believe 10 that he -- he -- the way that he's acting is not 11 the way that he intends to act. 12 Q. Well, how -- how long would it have been proper 13 to sit on his back like you did, the two of you, 14 under Minneapolis police policies and practices? 15 MS. FUNDINGSLAND: I object to the form 16 of the question. 17 THE WITNESS: There -- there is no time 18 limit. 19 BY MR. BENNETT: 20 Q. Do you know what the purpose of Gorman striking 21 Smith in the head was at 5:04:42 on the tape? 22 MS. FUNDINGSLAND: Objection, 23 repetitious. 24 THE WITNESS: I do not. 25 MR. BENNETT: Okay.</p>	<p style="text-align: right;">153</p> <p>1 Q. Well, did you -- did you -- did you ever watch 2 it with him? 3 A. I don't... 4 Q. Before his statement? 5 A. I don't know. I think I just handed it over to 6 the investigators. 7 Q. Did the investigators tell you why they didn't 8 ask you anything about the video? 9 A. What do you mean? 10 Q. Well, I mean they could have done what I did 11 with this video, right, the homicide 12 investigators? 13 A. They didn't have -- I don't -- I don't know why 14 they didn't. 15 Q. Okay. Did they ever talk to you about what 16 questions they were or were not going to ask 17 you? 18 A. No. 19 Q. What is the police purpose in calling him "a 20 mother fucker"? 21 A. There's no police purpose. 22 Q. Okay. Did you have any evidence available to 23 you at 5:10:47 on the pen video that made you 24 call the -- step the ambulance up to Code 3? 25 A. Ah... Let me see. Well, I -- I'm assuming I was</p>

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<p style="text-align: right;">154</p> <p>1 starting to get concerned that he was so</p> <p>2 unresponsive to us.</p> <p>3 Q. Did you know your Taser had video capability for</p> <p>4 5 minutes?</p> <p>5 A. Yes.</p> <p>6 Q. Okay.</p> <p>7 MR. BENNETT: Let's go back to</p> <p>8 Exhibit 35 with the...</p> <p>9 And turn up the volume.</p> <p>10 MS. BENNETT: The embedded?</p> <p>11 MR. BENNETT: It's the embedded.</p> <p>12 Do you have the Taser video? Just the plain</p> <p>13 Taser? That's not flipped over, though, is it?</p> <p>14 MR. STORMS: It's not flipped over.</p> <p>15 MR. BENNETT: Play the embedded one</p> <p>16 again.</p> <p>17 MS. BENNETT: With the Taser audio.</p> <p>18 MR. BENNETT: With the Taser audio, but</p> <p>19 I want it turned up so that he can hear the --</p> <p>20 MR. STORMS: Exhibit 35.</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. I want -- and I want you to look and see if you</p> <p>23 can hear the "fucking mope" and if it</p> <p>24 corresponds to the head strike.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">156</p> <p>1 MR. BENNETT: Can we get a both-knees</p> <p>2 video?</p> <p>3 (Sotto voce discussion between Katie</p> <p>4 Bennett and Robert Bennett.)</p> <p>5 MR. BENNETT: Show exhibit...</p> <p>6 Look at this tape.</p> <p>7 (Viewing video.)</p> <p>8 BY MR. BENNETT:</p> <p>9 Q. Do you see both knees on his back then?</p> <p>10 A. I see one.</p> <p>11 Q. Look at... Look at...</p> <p>12 MR. BENNETT: I mean go back and play it</p> <p>13 again.</p> <p>14 (Viewing of video ends.)</p> <p>15 (Viewing video.)</p> <p>16 BY MR. BENNETT:</p> <p>17 Q. Do you see two now?</p> <p>18 A. It looks like that's in transition to me.</p> <p>19 Q. Okay.</p> <p>20 (Viewing of video ends.)</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. Was it made clear when you were given your</p> <p>23 statement by Fors and Klund that there were</p> <p>24 topics that were going to be off limits--either</p> <p>25 that they wouldn't talk about them or wouldn't</p>
<p style="text-align: right;">155</p> <p>1 MR. BENNETT: 5:04:42 is when it should</p> <p>2 come up.</p> <p>3 (Viewing video.)</p> <p>4 MR. BENNETT: Is that turned up enough?</p> <p>5 MR. STORMS: (Nodding.)</p> <p>6 (Viewing of video continues.)</p> <p>7 BY MR. BENNETT:</p> <p>8 Q. Did you hear him say that?</p> <p>9 A. I heard what he said. It's not what you think</p> <p>10 he said.</p> <p>11 Q. What do you think he said?</p> <p>12 A. He says, "Nope," as if you're not going to be</p> <p>13 moving your head around. That's what I heard.</p> <p>14 Q. Okay.</p> <p>15 (Viewing of video ends.)</p> <p>16 BY MR. BENNETT:</p> <p>17 Q. And that's when he strikes him?</p> <p>18 A. I guess so.</p> <p>19 Q. All right.</p> <p>20 A. And there was no "Fuck'n." I didn't hear that</p> <p>21 part.</p> <p>22 Q. Well, I didn't do the -- you realize that</p> <p>23 Exhibit 33 was done by Minneapolis police</p> <p>24 personnel?</p> <p>25 A. Oh, okay.</p>	<p style="text-align: right;">157</p> <p>1 ask about them or you wouldn't answer them?</p> <p>2 A. No. I don't think so.</p> <p>3 Q. If they asked where Gorman was what would have</p> <p>4 been your response?</p> <p>5 A. He was on his upper body.</p> <p>6 Q. And they never -- the interviewers, Fors and</p> <p>7 Klund, never asked how long you remained on the</p> <p>8 upper body; correct?</p> <p>9 A. No.</p> <p>10 Q. Did you ever watch the video with the</p> <p>11 interviewers, Fors and Klund?</p> <p>12 A. No.</p> <p>13 Q. Were you ever asked to make an additional</p> <p>14 statement following this -- this one?</p> <p>15 A. What do you mean?</p> <p>16 Q. Were you ever asked to clarify things after</p> <p>17 they'd had a chance to flyspeck the --</p> <p>18 A. I --</p> <p>19 Q. -- video?</p> <p>20 A. -- don't believe so.</p> <p>21 Q. Did anybody from Internal Affairs ever look at</p> <p>22 the video with you?</p> <p>23 A. Not with me.</p> <p>24 Q. When you were with the grand jury did you see</p> <p>25 the grand jury see the video?</p>

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<p>1 A. I believe they did show the video, --</p> <p>2 Q. While you --</p> <p>3 A. -- as I recall.</p> <p>4 Q. Well, while you were in the room?</p> <p>5 A. I'm trying to remember. I -- because there was</p> <p>6 a big TV in front of me. I think we did. I'm</p> <p>7 not sure, though.</p> <p>8 Q. At the time you had restrained Smith by</p> <p>9 handcuffing you knew he had engaged in a ground</p> <p>10 fight with you and your partner; correct?</p> <p>11 A. Yes.</p> <p>12 Q. You knew he'd been tased five times?</p> <p>13 A. At that time I wasn't sure how many.</p> <p>14 Q. Four or five? Multiple times?</p> <p>15 A. Yes, multiple times.</p> <p>16 Q. You knew he was likely to be as short on breath</p> <p>17 as you and Gorman?</p> <p>18 MS. FUNDINGSLAND: Objection,</p> <p>19 repetitious.</p> <p>20 THE WITNESS: I don't know.</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. You believed he was acting like someone who was</p> <p>23 mentally ill or on a substance?</p> <p>24 A. He was acting very erratic and irrational I</p> <p>25 thought.</p>	<p>1 arresting a subject?</p> <p>2 A. Rarely.</p> <p>3 Q. Your sitting on Smith's legs prevented him from</p> <p>4 moving his lower body?</p> <p>5 A. That was my intention.</p> <p>6 Q. Okay. And you personally observed Gorman exert</p> <p>7 force and pressure on Smith's back with his knee</p> <p>8 or knees during and after the handcuffing;</p> <p>9 correct?</p> <p>10 A. I wouldn't say he was exerting force.</p> <p>11 Q. Well, his weight was on the knee; correct?</p> <p>12 A. Yes. Body -- some body weight, but not -- I</p> <p>13 didn't see him pushing down in the way -- in the</p> <p>14 manner that it appears that you're asking that</p> <p>15 question.</p> <p>16 Q. Did you see him, in fact, bounce a few times on</p> <p>17 him?</p> <p>18 A. Well, I saw him transition from one leg to</p> <p>19 another.</p> <p>20 Q. Okay. Did you see him grind his knee into</p> <p>21 Smith's back at some point?</p> <p>22 A. No.</p> <p>23 Q. Okay. You don't quarrel with the fact, though,</p> <p>24 that Gorman exerted pressure on Callahan -- or</p> <p>25 on Smith's back for approximately 4 minutes?</p>
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<p>1 Q. What you call an altered mental state?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Were you aware that all of these facts</p> <p>4 are risk factors that can present medical</p> <p>5 complications when you arrest a subject?</p> <p>6 A. Are those risk factors?</p> <p>7 Q. Uh-huh.</p> <p>8 A. I wasn't thinking about that at the time.</p> <p>9 Q. Well, do you know -- have you been trained that</p> <p>10 those are all risk factors that can present</p> <p>11 medical complications when you arrest a subject?</p> <p>12 A. I arrest people all the time that exhibit</p> <p>13 behavior like that.</p> <p>14 Q. Well, I'm just asking --</p> <p>15 A. It's commonplace.</p> <p>16 Q. -- are you aware that these items are risk</p> <p>17 factors that can present medical</p> <p>18 complications --</p> <p>19 A. I think -- I am aware that they are very</p> <p>20 uncommon occurrences.</p> <p>21 Q. Well, but they --</p> <p>22 A. They -- they could be a factor I suppose.</p> <p>23 Q. They could present --</p> <p>24 A. But very -- very rarely.</p> <p>25 Q. That can present medical complications when</p>	<p>1 A. I don't quarrel with the fact that he was</p> <p>2 holding him down.</p> <p>3 Q. By use of his knees?</p> <p>4 A. By use of the knee, yes.</p> <p>5 Q. Well, do you know if it was his right knee or</p> <p>6 his left knee? It was different --</p> <p>7 A. One or the other at different times.</p> <p>8 Q. Okay. Showing you...</p> <p>9 MR. BENNETT: I need the Request for</p> <p>10 Admissions.</p> <p>11 MR. STORMS: (Retrieving exhibit.)</p> <p>12 MR. BENNETT: Have I got the original of</p> <p>13 that one? I do.</p> <p>14 Hold on. I'll give you the original.</p> <p>15 BY MR. BENNETT:</p> <p>16 Q. Exhibit 40, that's "Defendants' Answers to</p> <p>17 Plaintiff's First Set of Requests for</p> <p>18 Admissions." Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Were you consulted about this?</p> <p>21 A. I don't know what it is.</p> <p>22 Q. Well, we asked -- formally as a matter of</p> <p>23 pleadings ask that the defendants admit certain</p> <p>24 things.</p> <p>25 A. Oh, okay.</p>

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<p style="text-align: right;">162</p> <p>1 Q. For instance, we ask -- Number 1 was to "Admit</p> <p>2 [that] the immediate cause of David Smith's</p> <p>3 death was anoxic encephalopathy."</p> <p>4 And that was admitted. You don't have any</p> <p>5 quarrel with that, do you?</p> <p>6 A. Well, I mean who admitted it?</p> <p>7 Q. Well, your... Ms. Fundingsland, on behalf of</p> <p>8 you.</p> <p>9 A. Okay.</p> <p>10 Q. These are now deemed admitted facts to the</p> <p>11 extent they are admitted.</p> <p>12 A. Okay.</p> <p>13 Q. That Smith -- you don't have any -- do you</p> <p>14 have any reason or evidence to contradict</p> <p>15 admission --</p> <p>16 A. What's anoxic enceph- --</p> <p>17 Q. Brain death. Lack of oxygen to the brain.</p> <p>18 A. Okay.</p> <p>19 Q. Do you have any reason to -- to not --</p> <p>20 A. I don't have any reason to dispute what the</p> <p>21 medical examiner might rule.</p> <p>22 Q. All right. To "Admit that Smith suffered a</p> <p>23 cardiopulmonary arrest on September 9, 2010."</p> <p>24 And that was admitted.</p> <p>25 Do you have any evidence or reason to state</p>	<p style="text-align: right;">164</p> <p>1 Q. Admission 7 requested was, "Admit that the</p> <p>2 mechanical asphyxiation of Smith on September 9,</p> <p>3 2010, was caused in whole or in part by pressure</p> <p>4 or force exerted on Smith's body by Defendant</p> <p>5 Gorman."</p> <p>6 And they denied that. Do you -- do you have</p> <p>7 any facts to support that?</p> <p>8 A. Same answer for 6.</p> <p>9 Q. You don't know?</p> <p>10 A. I don't know.</p> <p>11 Q. Okay.</p> <p>12 A. I don't know.</p> <p>13 Q. All right. If you were following the training</p> <p>14 you received as a law enforcement officer you</p> <p>15 would have moved Smith to his side after he was</p> <p>16 handcuffed; correct?</p> <p>17 A. No.</p> <p>18 Q. If you were following the training you received</p> <p>19 as a law enforcement officer you would have</p> <p>20 moved Smith to his side after you had noticed he</p> <p>21 had calmed down?</p> <p>22 A. No.</p> <p>23 Q. If you were following the training you received</p> <p>24 as a law enforcement officer you would have</p> <p>25 moved Smith to his side after he was not</p>
<p style="text-align: right;">163</p> <p>1 contrarily?</p> <p>2 A. No.</p> <p>3 Q. On 3, "Admit that Smith's anoxic encephalopathy</p> <p>4 was due to or as a consequence of [the]</p> <p>5 cardiopulmonary arrest suffered on September</p> <p>6 9th..."</p> <p>7 A. No.</p> <p>8 Q. So you -- you're okay with that admission?</p> <p>9 A. I --</p> <p>10 Q. It says admit --</p> <p>11 A. Well, I mean it... I didn't do the admitting,</p> <p>12 but if this --</p> <p>13 Q. Well, actually --</p> <p>14 A. If this is part of the case --</p> <p>15 Q. Actually you did, but they did it for you.</p> <p>16 A. Okay. Well, if this is a part of the procedure,</p> <p>17 then I don't have a -- I'm not objecting.</p> <p>18 Q. All right. And then it says -- 6 it says -- at</p> <p>19 6 admit -- we ask them to "Admit that the</p> <p>20 mechanical asphyxiation of Smith on September 9,</p> <p>21 2010, was caused, in whole or in part, [by</p> <p>22 pressure or] force exerted on Smith's body by</p> <p>23 Defendant Callahan."</p> <p>24 What evidence do you have to deny that?</p> <p>25 A. I don't know what the evidence is.</p>	<p style="text-align: right;">165</p> <p>1 resisting?</p> <p>2 A. No.</p> <p>3 Q. If you were following the training you received</p> <p>4 as a law enforcement officer you would have</p> <p>5 moved Smith to his side after he'd given up?</p> <p>6 A. No.</p> <p>7 Q. If you were following the training you received</p> <p>8 as a law enforcement officer you would have</p> <p>9 moved Smith to his side after he was complying</p> <p>10 with your commands?</p> <p>11 A. No.</p> <p>12 Q. If you had moved Smith to his side after he was</p> <p>13 handcuffed, calmed down, not resisting, given</p> <p>14 up, or complying, that would have been in</p> <p>15 accordance with your training, policy and case</p> <p>16 law that you're taught; correct?</p> <p>17 A. No.</p> <p>18 Q. Okay. Would it have been reasonable?</p> <p>19 A. If we had thought he was in distress it might</p> <p>20 have been reasonable.</p> <p>21 Q. Well, if you were following the training you</p> <p>22 received as a law enforcement officer you would</p> <p>23 have paid attention to Smith's breathing as soon</p> <p>24 as he had calmed down a bit; correct?</p> <p>25 A. If we were using a maximal restraint that would</p>

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<p style="text-align: right;">166</p> <p>1 have been reasonable then. That would have been</p> <p>2 in accordance with training.</p> <p>3 Q. Well, I didn't incorporate that in the question,</p> <p>4 so don't incorporate that into your --</p> <p>5 A. Well, that's what you're asking --</p> <p>6 Q. No, I'm not.</p> <p>7 A. You're asking that question.</p> <p>8 Q. No, I'm not.</p> <p>9 A. It doesn't say anywhere in our manual on</p> <p>10 handcuffing that they need to be placed in a</p> <p>11 recovery --</p> <p>12 Q. I'm --</p> <p>13 A. -- position.</p> <p>14 Q. -- not asking about policy.</p> <p>15 If you were following the training you</p> <p>16 received as a law enforcement officer you would</p> <p>17 have paid attention to Smith's breathing as soon</p> <p>18 as he'd calmed down a bit; correct?</p> <p>19 A. We never received training -- that training in</p> <p>20 my law enforcement training.</p> <p>21 Q. If you were to -- if you were to follow in the</p> <p>22 training you received as a law enforcement</p> <p>23 officer you would have paid attention to Smith's</p> <p>24 breathing as soon as he was not resisting;</p> <p>25 correct?</p>	<p style="text-align: right;">168</p> <p>1 And the fact that he was tased.</p> <p>2 I think there's a lot of different factors.</p> <p>3 Q. Really? Okay.</p> <p>4 Should Gorman have taken his knee off David</p> <p>5 Smith's back when David Smith had calmed down?</p> <p>6 A. I don't know.</p> <p>7 Q. Should Gor- --</p> <p>8 A. That's a judgment call.</p> <p>9 Q. Should Gorman have taken his -- gotten off David</p> <p>10 Smith's back when he was not resisting as hard?</p> <p>11 A. He had already exhibited behavior that he could</p> <p>12 calm down and then explode at any moment, so --</p> <p>13 Q. Well, --</p> <p>14 A. -- no.</p> <p>15 Q. -- you couldn't shoot him for that, could you?</p> <p>16 MS. FUNDINGSLAND: Objection,</p> <p>17 repetitious.</p> <p>18 THE WITNESS: No. That's why we were</p> <p>19 holding him down, to make sure that he didn't</p> <p>20 burst out in any further activity, for his</p> <p>21 well-being and ours.</p> <p>22 BY MR. BENNETT:</p> <p>23 Q. You realize that the mechanical asphyxia -- the</p> <p>24 mechanical force that was applied to asphyxiate</p> <p>25 him was in fact deadly force?</p>
<p style="text-align: right;">167</p> <p>1 A. No.</p> <p>2 Q. Okay. If you were following the training you</p> <p>3 received as a law enforcement officer you would</p> <p>4 have paid attention to Smith's breathing as soon</p> <p>5 as he had given up; correct?</p> <p>6 A. No. There's no specific training for that.</p> <p>7 Q. If you had done so, you would have been</p> <p>8 complying with your training policy and case</p> <p>9 law; correct?</p> <p>10 A. In regards to a maximal restraining technique.</p> <p>11 Q. Based on your training and years of experience</p> <p>12 as a police officer do you believe that David</p> <p>13 Smith died because pressure was exerted on his</p> <p>14 back for an extended period of time while he was</p> <p>15 in the prone restraint position causing him to</p> <p>16 mechanically asphyxiate?</p> <p>17 A. No.</p> <p>18 Q. Well, why do you think he died then?</p> <p>19 A. I think there was a multitude of factors.</p> <p>20 Q. What are they?</p> <p>21 A. I think his mental state of mind.</p> <p>22 I think the fact that he was taking a</p> <p>23 copious amount of cold medicine.</p> <p>24 The fact that he had exerted himself.</p> <p>25 I think there's a lot of different...</p>	<p style="text-align: right;">169</p> <p>1 A. No.</p> <p>2 Q. Okay. Do you disagree with the medical examiner</p> <p>3 about that then?</p> <p>4 MS. FUNDINGSLAND: Um --</p> <p>5 THE WITNESS: That the medical examiner</p> <p>6 said that?</p> <p>7 BY MR. BENNETT:</p> <p>8 Q. Well, that he said that the force -- the</p> <p>9 mechanical force was deadly, killed him?</p> <p>10 A. I don't disagree -- I don't disagree that he</p> <p>11 said that.</p> <p>12 Q. Do you disagree with the fact?</p> <p>13 A. I disagree that you're characterizing it as</p> <p>14 deadly force.</p> <p>15 Q. Well, deadly force can be -- can be with your</p> <p>16 car, your weapon, or your hands; right?</p> <p>17 A. Could.</p> <p>18 Q. Okay. In this case a gun wasn't used. The car</p> <p>19 wasn't used. And he was killed by the use of</p> <p>20 mechanical force; correct?</p> <p>21 MS. FUNDINGSLAND: I'll object to the</p> <p>22 form of the question.</p> <p>23 BY MR. BENNETT:</p> <p>24 Q. Well, I mean do you believe that...</p> <p>25 Do you have any reason to believe to be --</p>

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<p style="text-align: right;">170</p> <p>1 that to be untrue?</p> <p>2 A. I believe the medical examiner is using those</p> <p>3 words. I don't think that we caused the death</p> <p>4 in that manner.</p> <p>5 Q. And why is that?</p> <p>6 A. As I already told you. As I've stated, I think</p> <p>7 there was a multitude of factors that</p> <p>8 contributed to it. I don't think there's any</p> <p>9 one factor.</p> <p>10 Q. And let's list those. What are they?</p> <p>11 MS. FUNDINGSLAND: Objection, asked and</p> <p>12 answered.</p> <p>13 BY MR. BENNETT:</p> <p>14 Q. I just want to make sure I understand this</p> <p>15 complete list.</p> <p>16 The fact that he was mentally ill. That was</p> <p>17 one; right?</p> <p>18 A. I believe so, yes.</p> <p>19 Q. The fact that he was tased?</p> <p>20 A. Yes.</p> <p>21 Q. Multiple times?</p> <p>22 A. Yes.</p> <p>23 Q. The fact that he'd ingested drugs?</p> <p>24 A. Yes.</p> <p>25 Q. Or something that altered his mental state?</p>	<p style="text-align: right;">172</p> <p>1 Q. And reasonably?</p> <p>2 A. Yeah.</p> <p>3 Q. Okay. I mean if you were asked...</p> <p>4 You know, if you were to make a</p> <p>5 probable-cause determination, those would have</p> <p>6 been reasonable suspicions upon which you could</p> <p>7 have made a probable-cause determination;</p> <p>8 correct?</p> <p>9 A. Probable cause -- and for what? For arrest?</p> <p>10 Q. To take him in. To -- to -- you know, that he</p> <p>11 was a danger to himself or others and needed to</p> <p>12 be removed from the Y, for example.</p> <p>13 One of the things that made you decide to</p> <p>14 take him into custody was you weren't getting</p> <p>15 any -- he was unresponsive?</p> <p>16 A. Well, we don't take people into custody for</p> <p>17 people mentally ill or for having ingested</p> <p>18 drugs, per se.</p> <p>19 Q. Well, then what was he taken into custody for?</p> <p>20 A. Assault on a police officer is why he would have</p> <p>21 been taken into custody.</p> <p>22 Q. Well, but -- but what would he have been taken</p> <p>23 into custody for before you laid hands on him?</p> <p>24 A. He wasn't going to be taken into custody. He</p> <p>25 was going to be asked to leave the premises.</p>
<p style="text-align: right;">171</p> <p>1 And the fact that he had been involved in a</p> <p>2 ground fight?</p> <p>3 A. Physical exertion, yes.</p> <p>4 Q. Yeah, physical exertion or ground fight.</p> <p>5 And those are the things you knew at the</p> <p>6 time you got the handcuffs on him?</p> <p>7 A. No.</p> <p>8 Q. Well, you knew he was -- you had reason to</p> <p>9 believe he was mentally ill?</p> <p>10 A. I had reason to suspect.</p> <p>11 Q. All right. You knew he'd been tased?</p> <p>12 A. Yes.</p> <p>13 Q. You believed if he wasn't mentally ill, he was</p> <p>14 under the influence of drugs. You talked about</p> <p>15 it while you were sitting on him.</p> <p>16 A. Again, it was suspected.</p> <p>17 Q. Yeah. And you knew he had been involved in</p> <p>18 physical exertion. So you had two --</p> <p>19 A. That I knew.</p> <p>20 Q. Yeah. You had two things you knew beyond a</p> <p>21 reasonable doubt--that he was tased and that he</p> <p>22 had physical exertion. And you had reasonable</p> <p>23 suspicion to believe he was either mentally ill</p> <p>24 or had ingested drugs; correct?</p> <p>25 A. Suspected it, yes.</p>	<p style="text-align: right;">173</p> <p>1 Q. So the moment he struggles about leaving the</p> <p>2 place where he is a member and not doing</p> <p>3 anything wrong, at least, --</p> <p>4 A. He has a right to be there until the business</p> <p>5 owner, the establishment, requests that he</p> <p>6 leave.</p> <p>7 Q. Don't they have to tell him that, though?</p> <p>8 A. I don't know that they didn't.</p> <p>9 Q. You don't know that they did either, do you?</p> <p>10 A. No, I don't.</p> <p>11 Q. Did you look... I mean, for example, we know</p> <p>12 that he went into the fitness class or -- it was</p> <p>13 either that day or the day before and they just</p> <p>14 told him to leave and he left.</p> <p>15 A. I -- I got the impression they were afraid of</p> <p>16 him.</p> <p>17 Q. Okay. Did anybody tell you that, in those</p> <p>18 words?</p> <p>19 A. Yeah.</p> <p>20 Q. Who?</p> <p>21 A. I think it was Courtney.</p> <p>22 Q. They were afraid of him?</p> <p>23 A. They were afraid of his behavior, yes. His</p> <p>24 erraticness. He made them nervous.</p> <p>25 Q. Okay. Well, "nervous" and "afraid" are a little</p>

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174	<p>1 different things, but did they tell you they</p> <p>2 were afraid physically of him?</p> <p>3 A. They were concerned over the way that he was</p> <p>4 acting.</p> <p>5 Q. Okay. I'm going to take just a few minutes and</p> <p>6 make sure that I'm done, but I'm probably done.</p> <p>7 A. Okay.</p> <p>8 MR. BENNETT: Let me go off the record</p> <p>9 at 12:30.</p> <p>10 Let's take 5.</p> <p>11 (Recess taken.)</p> <p>12 MR. BENNETT: For purposes of this</p> <p>13 truncated process that we're operating in, and</p> <p>14 reserving all the rights I have should the case</p> <p>15 not settle at the immediate settlement</p> <p>16 conference, I am done with my questioning of</p> <p>17 Officer Callahan today.</p> <p>18 MS. FUNDINGSLAND: Okay.</p> <p>19 And we'll read and sign.</p> <p>20 MR. BENNETT: All right.</p> <p>21 Thank you.</p> <p>22 THE WITNESS: Thank you.</p> <p>23 (Concluded at 12:33 P.M.)</p> <p>24 * * *</p> <p>25</p>	176	<p>1 STATE OF MINNESOTA)</p> <p>2 : SS CERTIFICATE</p> <p>3 COUNTY OF WASHINGTON)</p> <p>4 I, TIMOTHY CALLAHAN, certify that I have</p> <p>5 read and examined the typewritten transcript of</p> <p>6 the deposition taken of me in the matter of</p> <p>7 Larry E. Smith, et al., vs. Timothy Gorman,</p> <p>8 et al., on January 30, 2012, consisting of the</p> <p>9 preceding pages, and find the same to be true</p> <p>10 and correct (Except as follows):</p> <p>11 Reason</p> <p>12 Page Line Correction for Change</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 Dated this _____ day of _____</p> <p>24 _____</p> <p>25 TIMOTHY CALLAHAN</p>
175	<p>1 STATE OF MINNESOTA)</p> <p>2 : ss CERTIFICATE</p> <p>3 COUNTY OF WASHINGTON)</p> <p>4 I, Janet D. Winberg, hereby certify</p> <p>5 that I reported the video deposition of TIMOTHY</p> <p>6 CALLAHAN, on the 30th day of January, 2012, in</p> <p>7 Minneapolis, Minnesota, and that the witness</p> <p>8 was, by me, first duly sworn to tell the truth;</p> <p>9 That the testimony was transcribed by me and is</p> <p>10 a true record of the testimony of the witness;</p> <p>11</p> <p>12 That I am not a relative, or employee, or</p> <p>13 attorney, or counsel of any of the parties; or a</p> <p>14 relative or employee of such attorney or</p> <p>15 counsel;</p> <p>16 That I am not financially interested in the</p> <p>17 action and have no contract with the parties,</p> <p>18 attorneys or persons with an interest in the</p> <p>19 action that affects or has a substantial</p> <p>20 tendency to affect my impartiality;</p> <p>21 That the right to read and sign the transcript</p> <p>22 by the witness was reserved.</p> <p>23</p> <p>24 WITNESS MY HAND AND SEAL THIS 3rd day of</p> <p>25 February, 2012.</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> <p>36</p> <p>37</p> <p>38</p> <p>39</p> <p>40</p> <p>41</p> <p>42</p> <p>43</p> <p>44</p> <p>45</p> <p>46</p> <p>47</p> <p>48</p> <p>49</p> <p>50</p> <p>51</p> <p>52</p> <p>53</p> <p>54</p> <p>55</p> <p>56</p> <p>57</p> <p>58</p> <p>59</p> <p>60</p> <p>61</p> <p>62</p> <p>63</p> <p>64</p> <p>65</p> <p>66</p> <p>67</p> <p>68</p> <p>69</p> <p>70</p> <p>71</p> <p>72</p> <p>73</p> <p>74</p> <p>75</p> <p>76</p> <p>77</p> <p>78</p> <p>79</p> <p>80</p> <p>81</p> <p>82</p> <p>83</p> <p>84</p> <p>85</p> <p>86</p> <p>87</p> <p>88</p> <p>89</p> <p>90</p> <p>91</p> <p>92</p> <p>93</p> <p>94</p> <p>95</p> <p>96</p> <p>97</p> <p>98</p> <p>99</p> <p>100</p> <p>101</p> <p>102</p> <p>103</p> <p>104</p> <p>105</p> <p>106</p> <p>107</p> <p>108</p> <p>109</p> <p>110</p> <p>111</p> <p>112</p> <p>113</p> <p>114</p> <p>115</p> <p>116</p> <p>117</p> <p>118</p> <p>119</p> <p>120</p> <p>121</p> <p>122</p> <p>123</p> <p>124</p> <p>125</p> <p>126</p> <p>127</p> <p>128</p> <p>129</p> <p>130</p> <p>131</p> <p>132</p> <p>133</p> <p>134</p> <p>135</p> <p>136</p> <p>137</p> <p>138</p> <p>139</p> <p>140</p> <p>141</p> <p>142</p> <p>143</p> <p>144</p> <p>145</p> <p>146</p> <p>147</p> <p>148</p> <p>149</p> <p>150</p> <p>151</p> <p>152</p> <p>153</p> <p>154</p> <p>155</p> <p>156</p> <p>157</p> <p>158</p> <p>159</p> <p>160</p> <p>161</p> <p>162</p> <p>163</p> <p>164</p> <p>165</p> <p>166</p> <p>167</p> <p>168</p> <p>169</p> <p>170</p> <p>171</p> <p>172</p> <p>173</p> <p>174</p> <p>175</p> <p>176</p> <p>177</p> <p>178</p> <p>179</p> <p>180</p> <p>181</p> <p>182</p> <p>183</p> <p>184</p> <p>185</p> <p>186</p> <p>187</p> <p>188</p> <p>189</p> <p>190</p> <p>191</p> <p>192</p> <p>193</p> <p>194</p> <p>195</p> <p>196</p> <p>197</p> <p>198</p> <p>199</p> <p>200</p> <p>201</p> <p>202</p> <p>203</p> <p>204</p> <p>205</p> <p>206</p> <p>207</p> <p>208</p> <p>209</p> <p>210</p> <p>211</p> <p>212</p> 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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Case No. 11-CV-03071(SRN/JJK)

Larry E. Smith, as trustee for
the Heirs and Next of Kin of
David Cornelius Smith,

Plaintiff,

vs.

Timothy Gorman and Timothy Callahan,
acting in their individual capacities
as Minneapolis police officers,
and the City of Minneapolis,

Defendants.

CONTINUATION

VIDEOTAPED DEPOSITION TRANSCRIPT OF

TIMOTHY CALLAHAN

October 16, 2012

9:34 A.M.

at

Gaskins, Bennett, Birrell, Schupp, LLP
333 South 7th Street
Suite 2900
Minneapolis, MN 55402

Court Reporter: Janet D. Winberg, RPR

Videographer: Jayme Hogan, Envision Video

Timothy Callahan
10/16/2012

211	<p>1 APPEARANCES:</p> <p>2 On Behalf of the Plaintiff:</p> <p>3 ROBERT BENNETT, Attorney at Law</p> <p>4 rbennett@gaskinsbennett.com</p> <p>5 JEFFREY S. STORMS, Attorney at Law</p> <p>6 jstorms@gaskinsbennett.com</p> <p>7 KATHRYN BENNETT, Attorney at Law</p> <p>8 kbennett@gaskinsbennett.com</p> <p>9 GASKINS, BENNETT, BIRRELL, SCHUPP, LLP</p> <p>10 333 South 7th Street</p> <p>11 Suite 2900</p> <p>12 Minneapolis, Minnesota 55402</p> <p>13</p> <p>14 On Behalf of the Defendants:</p> <p>15 C. LYNNE FUNDINGSLAND, Assistant City</p> <p>16 Attorney</p> <p>17 c.lynne.fundingsland@ci.minneapolis.mn.us</p> <p>18 CITY OF MINNEAPOLIS-OFFICE OF CITY ATTORNEY</p> <p>19 350 South Fifth Street</p> <p>20 City Hall, Room 210</p> <p>21 Minneapolis, Minnesota 55415</p> <p>22 Also Present: Chris Good</p> <p>23</p> <p>24 NOTE:</p> <p>25 The original transcript will be delivered to the noticing party, Gaskins, Bennett, Birrell & Schupp. NOTE: Exhibits 115 - 118 were marked.</p>
212	<p>1 PROCEEDINGS</p> <p>2</p> <p>3 VIDEOGRAPHER: This is the continuation</p> <p>4 of the deposition of Officer Timothy Callahan.</p> <p>5 The date is October 16, 2012. The time is</p> <p>6 approximately 9:34 A.M.</p> <p>7 Would each attorney please state his or her</p> <p>8 name for the record?</p> <p>9 MR. BENNETT: Robert Bennett, appearing</p> <p>10 on behalf of the plaintiff.</p> <p>11 MR. STORMS: Jeff Storms, on behalf of</p> <p>12 the plaintiff.</p> <p>13 MS. BENNETT: Kathryn Bennett, for the</p> <p>14 plaintiff.</p> <p>15 MS. FUNDINGSLAND: Lynne Fundingsland,</p> <p>16 excuse me, on behalf of the defendants.</p> <p>17 VIDEOGRAPHER: Thank you.</p> <p>18 Would the court reporter please administer</p> <p>19 the oath?</p> <p>20 * * *</p> <p>21 (Witness sworn.)</p> <p>22 TIMOTHY CALLAHAN,</p> <p>23 called as a witness, being first duly sworn,</p> <p>24 was examined and testified as follows:</p> <p>25 * * *</p>
213	<p>1 EXAMINATION</p> <p>2 BY MR. BENNETT:</p> <p>3 Q. We're going to cover this hopefully in some kind</p> <p>4 of section so it makes sense.</p> <p>5 And what I want to talk about first is the</p> <p>6 training that -- that you received.</p> <p>7 We have, for purposes of these questions,</p> <p>8 both portions of the transcript and video</p> <p>9 transcript of Officer...</p> <p>10 MR. BENNETT: Or is it Sergeant Brad</p> <p>11 Anderson?</p> <p>12 MR. STORMS: Brian.</p> <p>13 MR. BENNETT: Brian Anderson. Sorry.</p> <p>14 BY MR. BENNETT:</p> <p>15 Q. And -- and some of the actual training officers</p> <p>16 that you had.</p> <p>17 MR. BENNETT: Where's my...</p> <p>18 Let's go off the record for one second.</p> <p>19 VIDEOGRAPHER: Off the video record at</p> <p>20 9:35 A.M.</p> <p>21 (Off the record.)</p> <p>22 MR. BENNETT: I can go back on.</p> <p>23 VIDEOGRAPHER: We are back on the video</p> <p>24 record at 9:35 A.M.</p> <p>25 BY MR. BENNETT:</p>
214	<p>1 Q. Your training records indicate that you received</p> <p>2 training in the fall of 2009 for -- regular</p> <p>3 In-Service Training for Legal Updates, the</p> <p>4 EIS systems and CIT.</p> <p>5 Do you remember receiving that?</p> <p>6 A. What date was that?</p> <p>7 Q. It was October 19, 2009.</p> <p>8 A. I can't recall specifically --</p> <p>9 Q. All right.</p> <p>10 A. -- that.</p> <p>11 Q. Okay.</p> <p>12 A. This?</p> <p>13 Q. Yeah. Do you agree that you...</p> <p>14 That's a six-hour course?</p> <p>15 A. Do I agree that it's a six-hour course?</p> <p>16 Q. Yes.</p> <p>17 A. Yes.</p> <p>18 Q. Do you see that you were -- or at least it is</p> <p>19 recorded that you passed?</p> <p>20 A. Yes.</p> <p>21 Q. Would you infer from that pass that you went and</p> <p>22 attended?</p> <p>23 A. I would.</p> <p>24 Q. Okay. Do you remember attending?</p> <p>25 A. I don't.</p>

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215	<p>1 Q. Do you remember who taught it?</p> <p>2 A. I don't.</p> <p>3 Q. I'd like you to look at some testimony regarding</p> <p>4 certain aspects of this training.</p> <p>5 This is Brian Anderson's testimony.</p> <p>6 (Brian Anderson Embedded Video</p> <p>7 Page 80, Line 15 - Page 81, Line 20)</p> <p>8 "Q. Prior to September 9, 2010 did the MPD</p> <p>9 provide its officers with training on how to</p> <p>10 identify if a subject was suffering from the</p> <p>11 effects of mental illness?</p> <p>12 "A. When you say 'provide' do you say it to</p> <p>13 the department or to specific individuals?</p> <p>14 "Q. Did it provide to its officers. So not</p> <p>15 the department, but all of its officers. Let's</p> <p>16 start there.</p> <p>17 "A. I want to... Yes.</p> <p>18 "Q. So if you were an MPD officer on</p> <p>19 September 9, 2010 you would have expected they</p> <p>20 would have received at least some training on</p> <p>21 how to identify individuals suffering from</p> <p>22 mental illness?</p> <p>23 "A. They would have received... I can't</p> <p>24 testify -- until I look at the records to say</p> <p>25 how much individuals -- certain individuals</p> <p>have.</p> <p>Because obviously there's CIT officers that</p> <p>have a lot more training than other just regular</p> <p>street officers have.</p> <p>But regular street officers, yes, they have</p> <p>gotten some type or form of training particular</p> <p>to mental illness.</p> <p>"Q. And why was it important that MPD</p> <p>officers receive that training? And I'm talking</p> <p>about all officers.</p> <p>"A. It is important to try to recognize</p> <p>certain attributes of mental illness and knowing</p> <p>that it is an at-risk group that may need</p> <p>different response than others."</p> <p>BY MR. BENNETT:</p> <p>Q. Now my understanding is that you would be in the</p>	217	<p>1 those things are true; correct? Your official</p> <p>2 training record --</p> <p>3 A. Yes. But --</p> <p>4 Q. -- would verify --</p> <p>5 A. -- what I'm saying to you is I don't recall that</p> <p>6 particular in-service.</p> <p>7 But I -- if we went to it and that was what</p> <p>8 was taught at in-service and I -- and it's</p> <p>9 indicated that I was there, then I was there.</p> <p>10 Q. And you understand --</p> <p>11 A. We go to in-service all the time and I can't --</p> <p>12 I can't remember exactly every time that I have</p> <p>13 -- I mean I've been... For 20 years I've been</p> <p>14 to in-service.</p> <p>15 Q. So how many times have you received CIT</p> <p>16 training?</p> <p>17 A. I don't know.</p> <p>18 Q. More than once?</p> <p>19 A. I don't know. We'd have to look at the record</p> <p>20 to see how many times --</p> <p>21 Q. They're --</p> <p>22 A. -- it was.</p> <p>23 Q. -- in front of you.</p> <p>24 Why don't you take a look?</p> <p>25 A. You want me to look through --</p>
216	<p>1 group that Officer Anderson, as the legal</p> <p>2 designee, official designee of the city on</p> <p>3 training, indicated would be the regular street</p> <p>4 officer; is that true?</p> <p>5 A. Yes.</p> <p>6 Q. All right. And you didn't have the 40-hour</p> <p>7 course, but you had the CIT course that was</p> <p>8 embedded in the -- the regular in-service</p> <p>9 training?</p> <p>10 A. Can you say that again?</p> <p>11 Q. You didn't have the 40 hours?</p> <p>12 A. I did not have the 40-hour --</p> <p>13 Q. The --</p> <p>14 A. -- CIT course.</p> <p>15 Q. -- CIT training?</p> <p>16 A. No, I did not.</p> <p>17 Q. But you had the CIT training that the city</p> <p>18 provides that Officer Anderson talked about that</p> <p>19 it provides to the regular street officers in</p> <p>20 the in-service training; correct?</p> <p>21 A. If we were -- if that was part of our in-service</p> <p>22 for that time and that's what was being</p> <p>23 discussed at that time and I attended it, then</p> <p>24 yes.</p> <p>25 Q. Well, the records indicate that's all -- all</p>	218	<p>1 Q. Sure.</p> <p>2 A. -- every one?</p> <p>3 Q. Exhibit 23 is there for you to look.</p> <p>4 A. (Coughing.) Excuse me.</p> <p>5 Some of them just say "In-service Training,"</p> <p>6 so I don't know what was -- what -- what the</p> <p>7 topic was at those.</p> <p>8 I only see one that says -- specifically</p> <p>9 says "CIT."</p> <p>10 Q. And you're --</p> <p>11 A. Which is what I would interpret as what you're</p> <p>12 talking about.</p> <p>13 Q. And what Brian Anderson was talking about?</p> <p>14 A. We're talking about the same thing; right?</p> <p>15 Q. Yes.</p> <p>16 A. Yes.</p> <p>17 Q. And -- and the CIT training provided to</p> <p>18 Minneapolis police officers as a regular patrol</p> <p>19 officer, that's what you got according to your</p> <p>20 training records?</p> <p>21 A. The one -- there's only one that says</p> <p>22 specifically "CIT." There are many that just</p> <p>23 say, "In-Service Training."</p> <p>24 Q. All right.</p> <p>25 A. I don't know what was -- those -- I don't know</p>

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219	<p>1 what those training blocks were specifically.</p> <p>2 Q. So then it -- it may... But you got it at least</p> <p>3 once less than a year preceding the incident</p> <p>4 with David Smith?</p> <p>5 A. It would -- it would appear that way, yes.</p> <p>6 Q. And you may have had it more times in regular</p> <p>7 Fall In-Service Training that aren't</p> <p>8 specifically noted?</p> <p>9 A. Perhaps.</p> <p>10 Q. Okay. Have you received training on</p> <p>11 de-escalation of -- of situations with the</p> <p>12 mentally ill?</p> <p>13 A. Again, I can't -- I don't know specifically.</p> <p>14 And I -- and I don't recall what the particular</p> <p>15 information was from the 2009 one. Perhaps.</p> <p>16 Q. Do you remember the concept of de-escalation?</p> <p>17 A. I believe so, yes.</p> <p>18 Q. Do you know what I'm referring to as it relates</p> <p>19 to Crisis Intervention Training?</p> <p>20 A. I -- I don't know that I could tell you --</p> <p>21 recite the specifics of it, but I -- I</p> <p>22 understand what the term is.</p> <p>23 Q. The general concept?</p> <p>24 A. Yes.</p> <p>25 Q. Tell me what you think it is.</p>	221	<p>1 Brian Anderson Embedded Video</p> <p>2 Page 174, 7 - Page 174, Line 12)</p> <p>3</p> <p>4 "Q. And so this document would reflect that</p> <p>5 all officers have received at least some sort of</p> <p>6 training on how to de-escalate situations</p> <p>7 involving individuals with mental illness?</p> <p>8 "A. Correct. This would have been more of</p> <p>9 the awareness training that was put out."</p> <p>10 BY MR. BENNETT:</p> <p>11 Q. That's the... Again, the awareness training is</p> <p>12 for the regular street officers and the CIT</p> <p>13 training -- the 40-hour CIT training is for</p> <p>14 specific volunteers for that; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Did Gorman go with you to that training?</p> <p>17 MS. FUNDINGSLAND: Are you talking about</p> <p>18 the one in 2009?</p> <p>19 MR. BENNETT: The Fall in-Service in</p> <p>20 2009.</p> <p>21 THE WITNESS: I -- I don't -- to my</p> <p>22 knowledge I don't know that we've ever been to</p> <p>23 in-service training together.</p> <p>24 And I'm not sure that he was in the precinct</p> <p>25 at that time. He came down I think in 2009.</p>
220	<p>1 A. It -- I don't know that it's necessarily any</p> <p>2 different than you would use for anybody that</p> <p>3 you think needs to be calmed down or let them</p> <p>4 know that they're not in any danger, that</p> <p>5 there -- that, you know, we're there to help</p> <p>6 them.</p> <p>7 Q. Have you had -- been taught any particular steps</p> <p>8 to do that when you -- there's a recognition of</p> <p>9 mental illness on the part of the individual</p> <p>10 you're dealing with?</p> <p>11 A. I'm not -- can you say it again, please?</p> <p>12 MR. BENNETT: Can you read it back?</p> <p>13 Because I think I -- I articulated the question</p> <p>14 correctly, didn't I?</p> <p>15 (The following was read back by the</p> <p>16 court reporter:</p> <p>17 "Q. Have you had -- been taught any</p> <p>18 particular steps to do that when you -- there's</p> <p>19 a recognition of mental illness on the part of</p> <p>20 the individual you're dealing with?"</p> <p>21 THE WITNESS: I'm not sure.</p> <p>22 MR. BENNETT: Okay.</p> <p>23 (Sotto voce comments.)</p> <p>24 MR. BENNETT: If you'd look back.</p> <p>25 THE WITNESS: Oh. The bar code thing?</p>	222	<p>1 I'm not sure when.</p> <p>2 MR. BENNETT: Okay.</p> <p>3 (Sotto voce comments.)</p> <p>4 BY MR. BENNETT:</p> <p>5 Q. Do you know Adam Grobove?</p> <p>6 A. Yes, I do.</p> <p>7 (Adam Grobove Embedded Video</p> <p>8 Page 18, Line 21 - Page 19, Line 6)</p> <p>9 "Q. Did you ever train either Officer</p> <p>10 Callahan or Officer Gorman?</p> <p>11 "A. Yes.</p> <p>12 "Q. In CIT training?</p> <p>13 "A. Yes.</p> <p>14 "Q. Which ones?</p> <p>15 "A. I would have to look exactly at the</p> <p>16 training records to make sure when they attended</p> <p>17 to be accurate for you.</p> <p>18 "Q. But you remember training both of them?</p> <p>19 "A. Yes."</p> <p>20 BY MR. BENNETT:</p> <p>21 Q. And the record reflects that you received your</p> <p>22 training for CIT in 2009 on 9/14/2009; correct?</p> <p>23 A. Okay. Yes.</p> <p>24 Q. And if you look at Exhibit 43, which is Timothy</p> <p>25 Gorman's training records, you'll see that he</p> <p>received it a week later, on 9/21/2009, the CIT,</p> <p>the same training you -- that you got, the</p> <p>six-hour class.</p> <p>A. Okay.</p> <p>Q. Do you agree?</p>

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<p style="text-align: right;">223</p> <p>1 A. I see that that's what it says, yes.</p> <p>2 Q. Okay. And it shows that he passed, as well?</p> <p>3 A. That's what it says.</p> <p>4 Q. Does -- does the Grobove's testimony refresh</p> <p>5 your recollection as to who taught you?</p> <p>6 A. No.</p> <p>7 Q. You don't have any reason to --</p> <p>8 A. Well, when you -- you -- on the --</p> <p>9 MS. FUNDINGSLAND: Let -- let him</p> <p>10 finish --</p> <p>11 THE WITNESS: Okay.</p> <p>12 MS. FUNDINGSLAND: -- the question,</p> <p>13 please.</p> <p>14 BY MR. BENNETT:</p> <p>15 Q. Do you have any reason to believe it wasn't</p> <p>16 Grobove, as he testified?</p> <p>17 A. Officer Grobove specifically said CIT. That...</p> <p>18 Now I'm not sure if he's mistaken that I'm a</p> <p>19 CIT officer or Officer Gorman is a CIT officer.</p> <p>20 Q. No, he was taught the regular in-service</p> <p>21 training.</p> <p>22 A. Okay. I don't recall it.</p> <p>23 Q. Okay. So you would not deny that you received</p> <p>24 training on how to de-escalate situations</p> <p>25 involving individuals with mental illness?</p>	<p style="text-align: right;">225</p> <p>1 BY MR. BENNETT:</p> <p>2 Q. Did you recognize --</p> <p>3 MS. FUNDINGSLAND: Inebriated or</p> <p>4 mentally ill?</p> <p>5 BY MR. BENNETT:</p> <p>6 Q. Did you recognize him as -- as a person who</p> <p>7 likely had mental illness problems?</p> <p>8 A. I don't think so initially, when we first saw</p> <p>9 him.</p> <p>10 Q. When you first saw him he was digging in his bag</p> <p>11 that contained his worldly goods; correct?</p> <p>12 A. Yes.</p> <p>13 Q. Isn't that what you basically said in your</p> <p>14 statement?</p> <p>15 A. He was going through bags that I assumed were</p> <p>16 his and I -- I believe we know now that they</p> <p>17 were his.</p> <p>18 Q. Okay. And you'd received information that would</p> <p>19 be consistent with dealing with a person who had</p> <p>20 mental illness; correct?</p> <p>21 A. I don't believe so.</p> <p>22 Q. Okay.</p> <p>23 A. Do you have a copy of the call?</p> <p>24 Q. Well, it was an un-want person call; right?</p> <p>25 A. Right.</p>
<p style="text-align: right;">224</p> <p>1 A. No.</p> <p>2 Q. And you wouldn't deny that you received training</p> <p>3 in identifying people with mental illness?</p> <p>4 A. If that's what they say was taught on that date,</p> <p>5 then -- then no.</p> <p>6 Q. Well, do you remember what was taught?</p> <p>7 A. I don't remember it.</p> <p>8 Q. Okay. The idea of training is to provide you</p> <p>9 with necessary information to help you operate</p> <p>10 on the street; correct?</p> <p>11 A. Yes.</p> <p>12 Q. I mean as a regular street officer, patrol</p> <p>13 officer, you from time to time have to deal with</p> <p>14 people, especially in downtown Minneapolis, who</p> <p>15 have problems with mental illness?</p> <p>16 A. Do we have to deal with people on --</p> <p>17 Q. Yes.</p> <p>18 A. -- a regular...</p> <p>19 Yes.</p> <p>20 Q. You have to deal with people who are inebriated?</p> <p>21 A. Yes.</p> <p>22 Q. And... Did you recognize David Smith as one of</p> <p>23 those people?</p> <p>24 MS. FUNDINGSLAND: Can you break that</p> <p>25 down?</p>	<p style="text-align: right;">226</p> <p>1 Q. The... Do you remember what was dispatched?</p> <p>2 A. That's why I asked if you have a copy of the</p> <p>3 call. I believe it was just a person that was</p> <p>4 unwanted. I don't -- I don't believe there was</p> <p>5 information in there that would indicate he was</p> <p>6 a -- what we would refer to as an EDP,</p> <p>7 emotionally disturbed person.</p> <p>8 Q. Okay. How did you get to the 6th floor?</p> <p>9 A. Elevator.</p> <p>10 Q. Did somebody have to take you up there?</p> <p>11 A. A YMCA employee --</p> <p>12 Q. And --</p> <p>13 A. -- brought us up there.</p> <p>14 Q. And who was that?</p> <p>15 A. I don't remember her name.</p> <p>16 Q. When that occurred did she give you additional</p> <p>17 information about the subject?</p> <p>18 A. A -- a little bit. Not a lot.</p> <p>19 Q. What information?</p> <p>20 A. I -- I'm not a hundred percent sure exactly what</p> <p>21 she said, but she -- basically, as I recall,</p> <p>22 that there was an individual up there that was</p> <p>23 acting strangely and had intimidated a juvenile.</p> <p>24 Q. Okay. And that didn't give you any indication</p> <p>25 that he was EDP?</p>

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<p>1 A. That's -- that's not definitive evidence that 2 he's an EP [sic]. Some people are just jerks. 3 Q. Sure. Is it -- is it suggestive of an EDP? 4 A. It could be. It could be somebody... It could 5 be a number of different things. 6 Q. Well, he had -- you know -- you -- you -- we've 7 covered this before so I won't do it again. 8 You didn't go up there based on any criminal 9 allegations whatsoever; correct? 10 A. No. 11 Q. I was correct? 12 A. You are correct. 13 Q. All right. And -- and so that you're going up 14 there in a situation that's -- that's 15 non-criminal about someone who's acting 16 strangely; correct? 17 A. Based on the information that I had, I was not 18 -- I had no reason to believe that he had done 19 anything criminal. 20 Q. But -- but my premise is correct? It was a 21 non-criminal situation where the information you 22 received is that he has acted strangely towards 23 a young boy? 24 A. Well, the Y wanted him ejected from the Y. 25 Q. For acting strangely, as you indicated?</p>	<p>1 (Sotto voce comments.) 2 MS. FUNDINGSLAND: There's a question 3 pending. 4 THE WITNESS: Oh. Well... 5 BY MR. BENNETT: 6 Q. Do you remember what -- it's eight hours of 7 Taser training. What is it comprised, as best 8 you can recollect? 9 A. The basic functioning of -- of the CED. 10 Q. That doesn't take eight hours, does it? 11 A. I don't know. 12 Q. Did they -- did they train you regarding the 13 warnings put out by Taser, the manufacturer's 14 warnings? 15 A. I think those warnings were issued... I'm not 16 sure if those warnings were in effect when I 17 went through that class. 18 Q. Other -- Tasers had warnings since they put out 19 Tasers, their own... 20 A. No, there was some different... They came out 21 with some additional stuff -- 22 Q. In 2009 they did? 23 A. I don't know. 24 Q. But I mean there was -- there's ones that have 25 been general the -- the -- the whole time, the</p>
228	230
<p>1 A. That's their prerogative. 2 Q. Sure. But what I'm asking is did you have 3 the in... 4 My understanding is you had the information, 5 and it was non-criminal, about a person who was 6 acting strangely, that the Y wanted removed from 7 the premises; is that fair to say? 8 A. Yes. 9 Q. Okay. You also received Taser training? 10 A. Yes. 11 Q. And is the first Taser training you received in 12 2009 in April? 13 A. April... I'm looking at the wrong thing here. 14 I think this is Officer Gorman's. 15 Q. Yeah, you've got Gorman's. 16 A. Ah... 17 Q. We know he wasn't Taser certified. 18 A. This is -- is this what you're referring to? 19 Q. Yeah. Well, I don't know. Is it -- is it -- in 20 Caps it says, "2009 BASIC TASER OPERATOR"? 21 A. Yes. 22 Q. Yes. 23 A. It would -- it looks that way, yes. 24 Q. And so you're taught the... Do you remember 25 what that class includes?</p>	<p>1 regular operating one, that you don't shoot 2 somebody on an elevated surface. 3 You don't... I think they actually had 4 pregnant women. They removed pregnant women. 5 People in flammable substances. 6 You remember some of the major -- 7 A. Yes. 8 Q. -- things -- 9 A. Yes. 10 Q. -- that you're not supposed to use a Taser in; 11 correct? 12 A. Yes. 13 Q. Not while somebody is operating machinery or a 14 car? 15 A. Yes. 16 Q. Because they'll crash; right? 17 A. Okay. 18 Q. I mean you remember that; right? 19 A. I know that there are -- yes. 20 Q. And you get -- there's a -- there's a Taser 21 PowerPoint and it's like -- it's like Microsoft? 22 A. Yeah. 23 Q. It's versions 10.0... You know. I think 24 they're up to 15 or 16 now. 25 A. Okay.</p>

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<p style="text-align: right;">231</p> <p>1 Q. But they show you that; right?</p> <p>2 A. I believe so, yes.</p> <p>3 Q. They go through the operating characteristics of</p> <p>4 the weapon itself; right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. You know, they show you where the safety</p> <p>7 is. Show you where the laser is. And then you</p> <p>8 do -- you get tased; right?</p> <p>9 A. No.</p> <p>10 Q. You didn't -- you didn't get tased?</p> <p>11 A. (Shaking head.)</p> <p>12 Q. They don't require that anymore?</p> <p>13 A. You can volunteer to do it.</p> <p>14 Q. And you did not?</p> <p>15 A. Not there, no.</p> <p>16 Q. Have you been tased?</p> <p>17 A. Once.</p> <p>18 Q. Before that?</p> <p>19 A. Many years before that.</p> <p>20 Q. Okay. So you didn't feel the need to repeat the</p> <p>21 experience?</p> <p>22 A. I did not.</p> <p>23 Q. All right. I wouldn't -- I agree with you.</p> <p>24 But they also train you with regard to the</p> <p>25 specific policy of the Minneapolis Police</p>	<p style="text-align: right;">233</p> <p>1 to medical or other law enforcement personnel</p> <p>2 [sic]."</p> <p>3 That's part of the training specific to the</p> <p>4 Taser -- the Taser usage; correct?</p> <p>5 A. Yes.</p> <p>6 Q. The -- if you go up into the prior paragraph it</p> <p>7 says, "Post exposure treatment," that is</p> <p>8 "(Medical Aid) for a person that has been</p> <p>9 exposed to electricity from the CED shall</p> <p>10 include the following..." And the first</p> <p>11 bullet point is: "Determine if the subject is</p> <p>12 injured and requires EMS [sic]."</p> <p>13 Correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you had EMS training? The records reflect</p> <p>16 that.</p> <p>17 A. Very basic EMS training.</p> <p>18 Q. Well, again, the department provides EMS</p> <p>19 training that they believe is sufficient to</p> <p>20 allow you to operate on the street; correct?</p> <p>21 MS. FUNDINGSLAND: I'm going to object</p> <p>22 to the form of the question.</p> <p>23 THE WITNESS: To my knowledge the only</p> <p>24 EMS training that we've had in many years is</p> <p>25 CPR.</p>
<p style="text-align: right;">232</p> <p>1 Department on Tasers; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. That's Exhibit 91.</p> <p>4 MR. STORMS: 90.</p> <p>5 MR. BENNETT: 90. Pardon me.</p> <p>6 BY MR. BENNETT:</p> <p>7 Q. Showing you Exhibit 90, that is the Minneapolis</p> <p>8 Police Department's Operation Section</p> <p>9 Use-of-Force Policy. And particularly draw your</p> <p>10 attention to page 9 of that policy.</p> <p>11 5.314 says, "USE OF CONDUCTED ENERGY DEVICES</p> <p>12 (CED) 8/17/07."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. You're trained specifically on that policy in</p> <p>16 the Taser operation course; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And it trains that the...</p> <p>19 If you look at the last paragraph on the</p> <p>20 page it says, "Sworn employees..."</p> <p>21 That's you, right? That's officers?</p> <p>22 A. Yes.</p> <p>23 Q. "...shall routinely monitor the medical</p> <p>24 condition of a person that has been exposed to</p> <p>25 electricity from a CED until they are released</p>	<p style="text-align: right;">234</p> <p>1 MR. BENNETT: Okay.</p> <p>2 BY MR. BENNETT:</p> <p>3 Q. Did you get EMS training as part of the Taser --</p> <p>4 A. Not --</p> <p>5 Q. -- operation?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Did you get -- did they school you on what to</p> <p>8 look for after the use of conducted energy</p> <p>9 device in the Taser operation in terms of</p> <p>10 following this policy?</p> <p>11 A. I don't -- I don't think any more than what is</p> <p>12 right here.</p> <p>13 Q. But you see that the Taser -- any use of the</p> <p>14 Taser would engender a required response of</p> <p>15 monitoring routinely the medical condition of</p> <p>16 the person who's been tased; correct?</p> <p>17 A. It says that at the -- at the very bottom</p> <p>18 paragraph that you indicated earlier.</p> <p>19 Q. Uh-huh. Did they tell you why?</p> <p>20 A. I -- I don't recall it specifically.</p> <p>21 Q. Are you required to call for medical personnel</p> <p>22 once you have tased somebody?</p> <p>23 A. No.</p> <p>24 Q. What was your plan for the removal of David</p> <p>25 Smith after you had tased him and secured him?</p>

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235	<p>1 A. I -- I wanted him to leave on a stretcher</p> <p>2 because I didn't -- in case he decided to fight</p> <p>3 in the elevator, I didn't want to have to try to</p> <p>4 fight him in an elevator in an enclosed place.</p> <p>5 So I wanted the EMS to come and check him</p> <p>6 out because of his behavior and hopefully remove</p> <p>7 him on a stretcher.</p> <p>8 Q. So you -- you wanted the hospital people to</p> <p>9 remove him, medical personnel?</p> <p>10 A. From the 6th floor, yes. I believed -- after</p> <p>11 the fact I believe that he needed to go to the</p> <p>12 hospital based on his behavior.</p> <p>13 Q. Which part of the hospital?</p> <p>14 A. Well, that would be determined by the hospital.</p> <p>15 Q. Well, did you think he was going to the</p> <p>16 emergency room or the psyche ward?</p> <p>17 A. Probably the APS.</p> <p>18 Q. Which is the Adult Psychiatric Services?</p> <p>19 A. Yes.</p> <p>20 Q. All right. Why was a supervisor called?</p> <p>21 A. Because we used force.</p> <p>22 Q. Yeah. If you'd look at... This is the Taser</p> <p>23 training.</p> <p>24</p> <p>25</p>	237	<p>1 training in accordance with departmental policy?</p> <p>2 A. Yes.</p> <p>3 Q. Okay.</p> <p>4 (Brian Anderson Embedded Video</p> <p style="padding-left: 20px;">Page 112, Line 19 - Page 113, Line 5)</p> <p>5</p> <p>6 "Q. And so the duty to monitor -- monitor</p> <p>7 the medical condition of a subject, that's</p> <p>8 something that on September 9, 2010 was</p> <p>9 specifically in place post-tasing?</p> <p>10 "A. Correct.</p> <p>11 "Q. Okay. And you would have expected that</p> <p>12 even non-certified -- non-certified or non-Taser</p> <p>13 certified officers would have had an</p> <p>14 understanding that they had a duty to monitor</p> <p>15 the medical condition of a subject after they</p> <p>16 were tased?</p> <p>17 "A. Correct."</p> <p>18 BY MR. BENNETT:</p> <p>19 Q. And that's something you agree to, as well?</p> <p>20 A. I don't know that officers that don't have the</p> <p>21 CED, it would have been applicable to them. I'm</p> <p>22 not sure.</p> <p>23 Q. Well, everybody has to follow the use-of-force</p> <p>24 policy, all MPD sworn employees?</p> <p>25 A. Yes.</p> <p>Q. So that would include Gorman with regard to the</p> <p>Taser policy? They're supposed to --</p> <p>A. Well, I mean you're asking me specifically if</p> <p>he's aware of that or if he's -- I don't know.</p> <p>Q. I didn't ask you if he specific...</p> <p>Well, you understood that obligation</p>
236	<p>1 (Brian Anderson Embedded Video</p> <p style="padding-left: 20px;">Page 104, Line 1 - Page 105, Line 14)</p> <p>2</p> <p>3 "Q. Well, first of all, when this policy</p> <p>4 was issued, my -- my understanding is the issue</p> <p>5 date would be 8/17/07; is that correct?</p> <p>6 "A. Correct.</p> <p>7 "Q. Okay. And as we discussed earlier, you</p> <p>8 would have expected that this policy, upon</p> <p>9 issuance, would have been circulated throughout</p> <p>10 the MPD?</p> <p>11 "A. Correct.</p> <p>12 "Q. And you had an opportunity to review</p> <p>13 the training records in this case and some of</p> <p>14 those training records did relate to conducted</p> <p>15 energy devices; correct?</p> <p>16 "A. Correct.</p> <p>17 "Q. Okay. And from your review of the</p> <p>18 training records were you able to tell whether</p> <p>19 or not officers had been trained with respect to</p> <p>20 this policy by the MPD prior to September 2010?</p> <p>21 "A. Officer Callahan had, yes.</p> <p>22 "Q. With respect to this policy?</p> <p>23 "A. Yes.</p> <p>24 "Q. Do --</p> <p>25 "A. This specific policy, yes.</p> <p>"Q. Do you know whether or not</p> <p>Officer Gorman had been trained with respect to</p> <p>this specific policy?</p> <p>"A. I can't say what training that he</p> <p>specifically had on this policy, but I know that</p> <p>this policy had been sent out to everybody in</p> <p>the department so he would have had the</p> <p>opportunity to read it.</p> <p>"Q. Now at the very bottom of the policy it</p> <p>states that, 'Sworn employees shall routinely</p> <p>monitor the medical condition of a person that</p> <p>has been exposed to electricity from a CED until</p> <p>they are released to medical or other law</p> <p>enforcement personnel.' Do you see that?</p> <p>"A. Yes.</p> <p>"Q. And 'sworn employees,' that would be</p> <p>either Officer Gorman or Officer Callahan?</p> <p>"A. Correct."</p> <p>BY MR. BENNETT:</p> <p>Q. So you agree you'd received that specific</p>	238	<p>1 yourself personally then; correct?</p> <p>2 A. Yes.</p> <p>3 Q. And if Gorman followed the policy it would</p> <p>4 require that, as well; correct?</p> <p>5 A. The policy states that we routinely monitor the</p> <p>6 medical condition.</p> <p>7 Q. And there's a policy that says you're supposed</p> <p>8 to read the policies; right?</p> <p>9 A. Well, the policy is the policy.</p> <p>10 Q. And -- and you're required to know and</p> <p>11 understand the policies --</p> <p>12 A. Yes.</p> <p>13 Q. -- as a sworn officer?</p> <p>14 A. Yes.</p> <p>15 Q. Whether you use the CED or not?</p> <p>16 A. Okay.</p> <p>17 Q. Well, you agree?</p> <p>18 A. Well, I'm -- I'm not -- I don't know what</p> <p>19 Officer Gorman knows.</p> <p>20 Q. Well, I didn't ask... Officer Gorman's name</p> <p>21 didn't even appear in the...</p> <p>22 You're expected to follow --</p> <p>23 A. Well, --</p> <p>24 Q. -- pol- --</p> <p>25 A. Well, that's what you're asking me, though, --</p>

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239	<p>1 Q. No.</p> <p>2 A. -- if we both are aware of this.</p> <p>3 Q. No. I'm asking you are you both required to</p> <p>4 follow the policy? I don't even care if you're</p> <p>5 aware of it.</p> <p>6 A. We are -- we have a policy and -- and we are</p> <p>7 required to follow our policies.</p> <p>8 Q. Okay.</p> <p>9 (Sotto voce comments.)</p> <p>10 (Brian Anderson Embedded Video</p> <p>11 Page 106, Line 20 - Page 107, Line 20)</p> <p>12 "Q. And aside from just the tasing, I guess</p> <p>13 we can back up to Section 5-306.</p> <p>14 "Now here it states that, 'Any sworn MPD</p> <p>15 employee that uses force shall comply with the</p> <p>16 following requirements.'</p> <p>17 "And the first it lists is 'Medical</p> <p>18 Assistance.' And states, 'As soon as reasonably</p> <p>19 practical, determine if anyone was injured and</p> <p>20 render medical aid consistent with training and</p> <p>21 request emergency medical service if necessary';</p> <p>22 correct?</p> <p>23 "A. Correct.</p> <p>24 "Q. So this policy works similar to the</p> <p>25 Taser policy we discussed, in that after you use</p> <p>some level of force the first thing you want to</p> <p>do, as soon as it's reasonably practical, is</p> <p>monitor the medical condition of the subject you</p> <p>used force on?</p> <p>"A. Correct.</p> <p>"Q. Okay. And that's been standard</p> <p>training since well before September 2010?</p> <p>"A. Correct.</p> <p>"Q. The need to monitor the medical</p> <p>condition, as set forth in this policy, reflects</p> <p>the officers' obligations under the</p> <p>4th Amendment; correct?</p> <p>"A. Correct."</p>
240	<p>1 BY MR. BENNETT:</p> <p>2 Q. Would you agree with the answers to the</p> <p>3 questions that Officer Anderson gave?</p> <p>4 MS. FUNDINGSLAND: Sergeant.</p> <p>5 MR. BENNETT: Sergeant Anderson.</p> <p>6 Thank you, counsel.</p> <p>7 THE WITNESS: Yes.</p> <p>8 MR. BENNETT: All right.</p> <p>9 BY MR. BENNETT:</p> <p>10 Q. So do you think we've established in your mind</p> <p>11 that -- that monitoring the medical condition of</p> <p>12 the person you used force on, used a Taser on,</p> <p>13 or put in a prone restraint requires monitoring</p> <p>14 their physical condition and health?</p> <p>15 A. If I had reason to believe that they were in</p> <p>16 distress or injured, then yes.</p> <p>17 Q. Uh-huh. And part of it, of course, is if you're</p> <p>18 monitoring, you're paying attention.</p> <p>19 A. I'm not monitoring your condition right now, but</p> <p>20 I can see that you're okay.</p> <p>21 Q. Well, and obviously we'll get to that.</p> <p>22 There are indicia that normal human beings</p> <p>23 in interaction give each other that their</p> <p>24 physical condition is fine. You and I can, by</p> <p>25 looking and talking to each other, have</p>
241	<p>1 determined that we're both okay this morning;</p> <p>2 correct?</p> <p>3 A. Yes.</p> <p>4 Q. But we haven't had a ground fight, been tased,</p> <p>5 or put in the prone restraint position after</p> <p>6 being handcuffed; correct?</p> <p>7 A. No.</p> <p>8 Q. And I've been responsive when you said something</p> <p>9 to me and you've certainly been responsive when</p> <p>10 I've said something to you; correct?</p> <p>11 A. Yes.</p> <p>12 Q. So you can -- you know that by making noise</p> <p>13 we're breathing; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And we can extrapolate from the fact that we're</p> <p>16 both sitting here and moving and acting</p> <p>17 appropriately that our pulse is probably okay</p> <p>18 without the need to check it; correct?</p> <p>19 A. Yes.</p> <p>20 Q. But if I fell face forward on the -- on the --</p> <p>21 on the table here and no longer asked questions</p> <p>22 and no longer moved and you asked me questions</p> <p>23 and I didn't respond, you might think something</p> <p>24 was wrong, wouldn't you?</p> <p>25 A. I might.</p>
242	<p>1 Q. Okay. And you'd probably do something about it.</p> <p>2 Maybe not want to, as much as the next guy, but</p> <p>3 you probably would anyway, wouldn't you?</p> <p>4 MS. FUNDINGSLAND: Don't push it, Bob.</p> <p>5 MR. BENNETT: I understand.</p> <p>6 BY MR. BENNETT:</p> <p>7 Q. But you get the point?</p> <p>8 A. Yes, I do.</p> <p>9 Q. All right. And maybe it's more applicable than</p> <p>10 not. I mean you'd been in a situation where you</p> <p>11 had reason to, in your own words, become angry</p> <p>12 with David Smith; correct?</p> <p>13 A. I wasn't angry with him.</p> <p>14 Q. You said you were in your testimony before,</p> <p>15 didn't you?</p> <p>16 A. I was -- I was angry that I had got punched, but</p> <p>17 it wasn't personal. I wasn't personally --</p> <p>18 Q. I can --</p> <p>19 A. -- angry with him.</p> <p>20 Q. Do you want me to read the answer to you? Do --</p> <p>21 A. No, I --</p> <p>22 Q. Have you read your deposition?</p> <p>23 A. -- understand what I said.</p> <p>24 Q. Did you say that you were angry with him?</p> <p>25 A. Not on a personal level. Or a professional.</p>

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<p style="text-align: right;">243</p> <p>1 I was -- I was mad that that happened.</p> <p>2 Q. Okay. Well, I guess I'll... Just so the record</p> <p>3 is clear...</p> <p>4 MR. BENNETT: Let's go off the record</p> <p>5 for just a second here.</p> <p>6 VIDEOGRAPHER: Off the video record at</p> <p>7 10:11 A.M.</p> <p>8 (Off the record.)</p> <p>9 MR. BENNETT: Let's go back on the</p> <p>10 record.</p> <p>11 VIDEOGRAPHER: One moment, please.</p> <p>12 We are back on the video record at</p> <p>13 10:12 A.M.</p> <p>14 BY MR. BENNETT:</p> <p>15 Q. I asked you when you said, quote,</p> <p>16 "Oh, mother fucker," I asked, "What's that</p> <p>17 about?" And you gave the following answer,</p> <p>18 page 131, line 7.</p> <p>19 "I was angry about getting punched in the</p> <p>20 face."</p> <p>21 And then I say, "Okay."</p> <p>22 And he [sic] added, "I was in pain."</p> <p>23 Is that true?</p> <p>24 A. That's true.</p> <p>25 Q. Okay. And you also said that you were angry</p>	<p style="text-align: right;">245</p> <p>1 treatment to it, did you?</p> <p>2 A. I went to the hospital.</p> <p>3 Q. I -- I understand. They looked at it. X-rayed</p> <p>4 it?</p> <p>5 A. I think so.</p> <p>6 Q. Well, but they didn't -- your jaw was not --</p> <p>7 A. It was not broken.</p> <p>8 Q. -- broken?</p> <p>9 There was nothing...</p> <p>10 Have you had any medical treatment for it?</p> <p>11 Any brace? Was your jaw wired?</p> <p>12 A. No.</p> <p>13 Q. Anything like that?</p> <p>14 Were you required to take any medication for</p> <p>15 it?</p> <p>16 A. Just over-the-counter.</p> <p>17 Q. Okay. So you took some Advil or something</p> <p>18 to...</p> <p>19 A. Yes.</p> <p>20 Q. Or put ice on it or something like that;</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. But this is at the six -- you realize that your</p> <p>24 "mother fucker" comments are from 6:05 to 6:41;</p> <p>25 correct?</p>
<p style="text-align: right;">244</p> <p>1 about being punched by him, correct, on</p> <p>2 page 136?</p> <p>3 MS. FUNDINGSLAND: I'd ask that you show</p> <p>4 him the depo.</p> <p>5 MR. BENNETT: Yeah.</p> <p>6 BY MR. BENNETT:</p> <p>7 Q. And then you said, "...but it wasn't a personal</p> <p>8 thing for me."</p> <p>9 So you're telling us that when you leaned</p> <p>10 down to him and said, "You mother fucker, you</p> <p>11 better not have broke my jaw," that was not a</p> <p>12 personal thing for you? Is that what you're</p> <p>13 telling us under oath?</p> <p>14 A. I -- I don't deny that I said those words.</p> <p>15 I'm -- I'm saying it was not a personal thing</p> <p>16 for me.</p> <p>17 Q. Well, --</p> <p>18 A. Something that -- sometimes that happens.</p> <p>19 Q. Was there -- yeah, I understand.</p> <p>20 And sometimes you get angry about it.</p> <p>21 A. I -- I -- the reason I was probably angry is I</p> <p>22 was concerned that it might actually be broken.</p> <p>23 Q. And it wasn't, was it?</p> <p>24 A. It was not.</p> <p>25 Q. Did you -- you didn't have any actual medical</p>	<p style="text-align: right;">246</p> <p>1 A. I don't know.</p> <p>2 Q. Well, look at --</p> <p>3 A. I don't dispute it.</p> <p>4 Q. I know, but I don't want you to think I'm just</p> <p>5 making this stuff up either.</p> <p>6 Exhibit 30 is the IA pen camera video.</p> <p>7 At 6:05 you start talking about, "The jaw hurts</p> <p>8 on this side." Do you see that?</p> <p>9 A. Uh-huh. Yes, I do.</p> <p>10 Q. Okay. You go on at 6:11 to say, "Oh, mother</p> <p>11 fucker"; right?</p> <p>12 A. Yes.</p> <p>13 Q. And then you go -- you say, "Oh, fuck," at 6:22?</p> <p>14 A. I don't recall that, but okay. Yes.</p> <p>15 Q. Well, I -- this is the IA --</p> <p>16 A. Well, they've been wrong on some other stuff.</p> <p>17 Q. Okay. Do you remember saying, "Oh, fuck"?</p> <p>18 A. Not really.</p> <p>19 Q. Okay. Do you remember saying, "I can't bite</p> <p>20 down. Mother fucker..."</p> <p>21 "I can't bite down." Period. "Mother</p> <p>22 fucker, you better not have broke my fucking</p> <p>23 jaw," at 6:46?</p> <p>24 A. Okay. I -- I -- I know I said that. Now...</p> <p>25 I thought that was this. I don't know about</p>

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<p style="text-align: right;">247</p> <p>1 that one there. I don't remember saying --</p> <p>2 Q. We --</p> <p>3 A. -- that. I don't --</p> <p>4 Q. We can play it.</p> <p>5 A. Okay. I'm just saying I don't remember it.</p> <p>6 Q. Okay. But --</p> <p>7 A. This one I remember it.</p> <p>8 Q. But I asked you specifically at page 140 -- 131</p> <p>9 about...</p> <p>10 And we had looked at the... At the prior</p> <p>11 deposition we looked at the pen camera, didn't</p> <p>12 we?</p> <p>13 A. Yes.</p> <p>14 Q. A number of times?</p> <p>15 A. Yeah.</p> <p>16 Q. And I asked you -- and then we talk, "My jaw</p> <p>17 hurts on this side."</p> <p>18 "Yes."</p> <p>19 "Not going to call -- wait for somebody to</p> <p>20 get down with this call [sic]"?</p> <p>21 A. No. "...done with roll call."</p> <p>22 Q. "...done with roll call."</p> <p>23 A. That was -- that was in reference to a</p> <p>24 supervisor.</p> <p>25 Q. Coming?</p>	<p style="text-align: right;">249</p> <p>1 Q. What was going to... I know. What was the</p> <p>2 "or else"? What -- what -- what would have</p> <p>3 happened if you'd have broke your jaw? What</p> <p>4 were you going to do to him?</p> <p>5 A. I wasn't going to do anything to him. If I had</p> <p>6 wanted...</p> <p>7 I was angry because I didn't want my jaw to</p> <p>8 be broken. That would keep me from work.</p> <p>9 Q. Uh-huh.</p> <p>10 A. I didn't want to be on a desk for however long</p> <p>11 it takes for a broken jaw to heal.</p> <p>12 Q. Okay. But it wasn't for a minute and 10 seconds</p> <p>13 until you did the first check of his pulse;</p> <p>14 correct? After you say, "Oh, mother fucker, you</p> <p>15 better not have broke my jaw"?</p> <p>16 A. That is what the document you're showing me</p> <p>17 says, yes.</p> <p>18 Q. The IA Timeline of Events of the pen camera</p> <p>19 video?</p> <p>20 A. Okay.</p> <p>21 Q. Exhibit 30.</p> <p>22 A. All right.</p> <p>23 Q. Okay.</p> <p>24 (Sotto voce comments.)</p> <p>25 BY MR. BENNETT:</p>
<p style="text-align: right;">248</p> <p>1 A. Yes.</p> <p>2 Q. You were talking about waiting for somebody --</p> <p>3 A. That's right.</p> <p>4 Q. -- about whether...</p> <p>5 And then you go at one thirty -- 6:05 you</p> <p>6 say, "My jaw hurts on this side."</p> <p>7 Gorman responds seconds later with, "The</p> <p>8 whole right side of your face is all red."</p> <p>9 And then you say, "Oh, mother fucker."</p> <p>10 A. Okay.</p> <p>11 Q. And then I ask you specifically at that</p> <p>12 time--you were angry about being punched in the</p> <p>13 face.</p> <p>14 And -- and you remained angry about</p> <p>15 something from 6:05 until 6:45; correct?</p> <p>16 A. 45 minutes?</p> <p>17 Q. 45 seconds.</p> <p>18 A. Oh.</p> <p>19 Q. It's -- well, it's about 35 seconds.</p> <p>20 A. Okay.</p> <p>21 Q. But I mean you're still angry about the jaw</p> <p>22 thing from the time you say, "Oh, mother fucker"</p> <p>23 until you say, "Mother fucker, you better not</p> <p>24 have broke my fucking jaw"?</p> <p>25 A. Yeah, I don't dispute that I said that.</p>	<p style="text-align: right;">250</p> <p>1 Q. Do you dispute that?</p> <p>2 MS. FUNDINGSLAND: Can you be more</p> <p>3 clear?</p> <p>4 BY MR. BENNETT:</p> <p>5 Q. Well, do you dispute the transcript, any other</p> <p>6 portion other than the quote that says,</p> <p>7 "Fucking mope"? I understand you just -- that</p> <p>8 you -- that's in the I think the exhibit --</p> <p>9 that's in the Taser video, too.</p> <p>10 But do you dispute anything on Exhibit 30?</p> <p>11 A. No.</p> <p>12 Q. Okay.</p> <p>13 (Sotto voce comments.)</p> <p>14 MR. BENNETT: Let's look at this one.</p> <p>15 (Brian Anderson Embedded Video</p> <p>16 Page 113, Line 13 - Page 114, Line 5)</p> <p>17 "Q. And it's a little... In some sense</p> <p>18 it's superfluous or redundant, I guess, that you</p> <p>19 need to monitor the medical condition of someone</p> <p>20 post-tasing because the policy was already</p> <p>21 requiring officers to monitor the medical</p> <p>22 condition of a subject after any force?</p> <p>23 "A. Correct.</p> <p>24 "Q. Okay. And in terms of monitoring the</p> <p>25 medical condition of a subject, and I think we</p> <p>touched on it briefly, things that officers were</p> <p>trained prior to 2010 to observe would be, 'Is</p> <p>the subject breathing"?</p> <p>"A. Correct.</p> <p>"Q. 'Are they conscious"?</p> <p>"A. Correct.</p> <p>"Q. 'Do they have any other</p> <p>life-threatening injuries"?</p> <p>"A. Correct."</p>

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251	<p>1 BY MR. BENNETT:</p> <p>2 Q. Do you agree with the training designee,</p> <p>3 official designee of the city in that regard,</p> <p>4 with regard to those questions and answers?</p> <p>5 A. That's -- it -- was he reading from the manual?</p> <p>6 Q. No. He was answering questions under oath as</p> <p>7 the official designee of the city regarding</p> <p>8 training, what they call a Rule 30(b)(6)</p> <p>9 witness.</p> <p>10 A. Yes.</p> <p>11 Q. Okay.</p> <p>12 (Sotto voce comments.)</p> <p>13 (Brian Anderson Embedded Video</p> <p>14 Page 190, Line 3 - Page 190, Line 18)</p> <p>15 "Q. And it goes on to say, 'Once [a]</p> <p>16 subject is secured, an officer shall watch for</p> <p>17 any of the following signs:</p> <p>18 "Significant change in behavior or level</p> <p>19 [of] consciousness;</p> <p>20 "Shortness of breath or irregular breathing;</p> <p>21 "Seizures or convulsions;</p> <p>22 "Complaints of serious pain or injury;</p> <p>23 "And/or any other serious medical problem</p> <p>24 [sic].</p> <p>25 Do you see that?</p> <p>"A. Yes.</p> <p>"Q. Now this -- at a certain level this</p> <p>mirrors the use-of-force policy itself which</p> <p>says you need to monitor the medical condition</p> <p>of the subject?</p> <p>"A. Correct."</p> <p>BY MR. BENNETT:</p> <p>Q. And do you agree with the -- Sergeant Anderson's</p>
252	<p>1 answers with regard to that?</p> <p>2 A. Where was the question that your colleague was</p> <p>3 reading from? He was reading from the manual I</p> <p>4 believe.</p> <p>5 MR. STORMS: Maximal restraint.</p> <p>6 MR. BENNETT: Maximal restraint policy.</p> <p>7 MS. FUNDINGSLAND: You said, "It</p> <p>8 says..." I think.</p> <p>9 MR. BENNETT: Yeah.</p> <p>10 BY MR. BENNETT:</p> <p>11 Q. He's -- he was reading from where I -- the</p> <p>12 "Where [sic] ANY restraint is used..." policy.</p> <p>13 A. I agree that if you use a maximal restraint that</p> <p>14 that's correct.</p> <p>15 Q. And... Okay.</p> <p>16 (Sotto voce comments.)</p> <p>17 BY MR. BENNETT:</p> <p>18 Q. How about post-tasing?</p> <p>19 A. You -- you would monitor a person's medical</p> <p>20 condition.</p> <p>21 Q. Including his breathing?</p> <p>22 A. In the sense that you would monitor anybody's</p> <p>23 breathing.</p> <p>24 Q. Level of consciousness?</p> <p>25 A. Yes.</p>
253	<p>1 Q. Pulse?</p> <p>2 A. No.</p> <p>3 Q. Why wouldn't you monitor their pulse?</p> <p>4 A. I -- I have never monitored anybody's pulse.</p> <p>5 Q. You've never taken anybody's pulse before this</p> <p>6 time? Is that what you're telling me?</p> <p>7 A. I think people -- on people that were already</p> <p>8 deceased, on some sort of a situation like that.</p> <p>9 I've never been where I thought I needed to</p> <p>10 check somebody's pulse to see if they were -- or</p> <p>11 on a continuing basis.</p> <p>12 Q. To see if their heart was beating?</p> <p>13 A. No.</p> <p>14 Q. Okay.</p> <p>15 (Sotto voce comments.)</p> <p>16 BY MR. BENNETT:</p> <p>17 Q. Well, you think that -- you think you've been</p> <p>18 trained that the need to monitor the</p> <p>19 consciousness, breathing and...</p> <p>20 So you'd agree post-tasing you're supposed</p> <p>21 to monitor and look out for or assess any change</p> <p>22 in behavior or level of consciousness; correct?</p> <p>23 A. In a broad sense I would say yes.</p> <p>24 Q. Shortness of breath or irregular breathing?</p> <p>25 A. Where are you reading from now?</p>
254	<p>1 Q. Well, I'm reading from -- it says, "When ANY</p> <p>2 restraint technique is used on the subject..."</p> <p>3 Essentially, Officer, every other officer</p> <p>4 we've asked except you and Callahan -- and</p> <p>5 Gorman, excuse me, say that these -- these --</p> <p>6 the medical monitoring, as delineated in</p> <p>7 9111.01, apply generally. You disagree with</p> <p>8 that?</p> <p>9 A. Kind of in the way that you're putting it. I am</p> <p>10 not -- I'm not denying that we are responsible</p> <p>11 for people once we take them into custody.</p> <p>12 Q. I know. You did answer that -- my questions on</p> <p>13 that.</p> <p>14 But let's look at this. This is not a</p> <p>15 training officer, this is another officer.</p> <p>16 (Erick Fors Embedded Video</p> <p>17 Page 96, Line 3 - Page 98, Line 6)</p> <p>18 "Q. Somebody you take -- you lay hands on</p> <p>19 and you use force on them, you have to monitor</p> <p>20 their consciousness; correct?</p> <p>21 "A. Correct.</p> <p>22 "Q. You have to monitor their -- their</p> <p>23 breathing; in other words, they can't -- you</p> <p>24 don't want them to stop breathing or have a</p> <p>25 compromise in their breathing, do you?</p> <p>"A. Correct.</p> <p>"Q. You're responsible for the people you</p> <p>seize and lay hands on from the time you do so</p> <p>until the time you turn them over to either the</p> <p>jail or the medical personnel; correct?</p> <p>"A. Correct.</p>

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255	<p>1 "Q. You have been taught in your training 2 that if a person -- that -- well, there are a 3 number of situations you've been taught or 4 trained to turn an arrestee on their side or to 5 set them up -- sit them up; correct? 6 "A. Correct. 7 "Q. One of them, oddly enough, is the 8 excited delirium situation? You actually have 9 training on that; right? 10 "A. Correct. 11 "Q. And you're trained that if there's any 12 -- you're supposed to pay attention if there's 13 any of those myriad of things that they list for 14 potential excited delirium; that you're to watch 15 their breathing and if there's any compromise at 16 all you turn them on their side or sit them up 17 so you get them breathing; correct? 18 "A. That sounds accurate. 19 "Q. That's also true with regard to really 20 any time that you have a person restrained in a 21 prone restraint and you notice any compromise of 22 breathing, that's what you're supposed to do? 23 That's the response? 24 "A. I -- I would agree with you. 25 "Q. The other thing is you're supposed to pay attention to the person you're continuing to use force on to determine if they're losing consciousness or having trouble breathing? "A. Correct. "Q. So you can't really -- you know, you don't want to talk about the weather? You don't want to, you know, try to figure your golf score in reverse order from the holes you played? You don't want to -- you want to pay attention to the -- to the very serious business of -- of -- of using force on people, which is something that we license police officers to do; correct? "A. Yes, you should -- "Q. Okay. "A. -- be aware, yes."</p> <p>BY MR. BENNETT: Q. You know who that is of course, don't you? A. That was Sergeant Fors. Q. Do you agree with his answers to those</p>	257	<p>1 since we've already seen him, right, before? 2 A. Yes. 3 Q. Would you agree with Officer Grobove? 4 A. Yes. 5 (Amelia Huffman Embedded Video 6 Page 88, Line 7 - Page 88, Line 22) 7 "Q. And similarly officers have an 8 obligation under the 4th Amendment when they -- 9 when they arrest someone or otherwise maintain 10 someone in custody, they have an obligation to 11 ensure that that person remains in good health? 12 "A. Yes. 13 "Q. Continues to breathe? 14 "A. Yes. 15 "Q. And so officers have an obligation 16 under the 4th Amendment to, for example, 17 continue to -- to continue monitoring the 18 breathing of a suspect that they've arrested? 19 "A. Yes. 20 "Q. That didn't happen in this case? 21 "A. No. There was a significant gap of 22 time in which that did not happen." 23 BY MR. BENNETT: 24 Q. Do you agree -- do you know who that was? 25 A. That was Captain Huffman. Q. Do you have any disagreement with any of her answers? A. In regards to this particular situation? Q. Yes. A. Yes. Q. What do you disagree with? A. I would contend that we were monitoring his condition and we had no reason to believe that</p>
256	<p>1 questions? 2 A. I -- I don't know what -- I don't know what you 3 mean. 4 Q. Well, do you agree with the answers he gave to 5 those questions? Or is there some particular 6 answer you'd like to take issue with? 7 A. No. 8 Q. Okay. So you do agree with him? 9 A. Yes. 10 Q. Okay. 11 (Adam Grobove Embedded Video 12 Page 23, Line 25 - Page 24, Line 17) 13 "Q. And they'd be trained that once you 14 have a subject secured, that an officer shall 15 watch for any of the following signs, including 16 significant change of behavior or level of 17 consciousness? 18 "A. Yes, those are behaviors. 19 "Q. Shortness of breath, irregular 20 breathing or not breathing? 21 "A. Yes. 22 "Q. Seizures, convulsions? 23 "A. Yes. 24 "Q. Complaints of any another serious pain 25 or injury and any other serious medical problem, right? "A. Yes. "Q. I mean, you're basically -- "A. It's medical monitoring. "Q. -- supposed to medically monitor the person you're arresting? "A. Yes."</p> <p>BY MR. BENNETT: Q. Would you agree with anything... You know who that officer is, I assume,</p>	258	<p>1 he was in distress until I realized he was in 2 distress. 3 (Unidentified video started.) 4 MR. BENNETT: Well, stop it. Can you 5 stop it? 6 MR. STORMS: (Complying.) 7 BY MR. BENNETT: 8 Q. He was in distress within seconds of you -- of 9 you finishing the handcuffing of him; correct? 10 A. I don't know. 11 Q. What did you do to check before you checked his 12 pulse? 13 A. He was breathing. I knew he was breathing 14 because he was yelling and screaming and moving 15 around. 16 Q. For how long? 17 A. I don't know. 18 Q. Before he -- he didn't yell or scream or move 19 after the agonal breathing was done, at all, did 20 he? 21 A. I -- I don't think so. 22 Q. Okay. And for some period before the agonal 23 breathing, the death rattle, he didn't move, did 24 he? 25 A. I don't know.</p>

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259	<p>1 Q. Do you remember?</p> <p>2 A. I -- I would have to see the tape again.</p> <p>3 Q. Okay.</p> <p>4 (Richard Zimmerman Embedded Video Page 69, Line 9 - Page 70, Line 11)</p> <p>5 "Q. As a homicide investigator and then,</p> <p>6 you know, obviously now as a lieutenant, do you</p> <p>7 have the ability to point out any policy</p> <p>8 violations that you observe to someone in</p> <p>9 internal affairs?</p> <p>10 "A. Yes. I have a duty to report policy</p> <p>11 violations. Yeah.</p> <p>12 "Q. Okay. And is that something you've</p> <p>13 done before?</p> <p>14 "A. Yes.</p> <p>15 "Q. Okay. Did you observe any policy</p> <p>16 violations in this case?</p> <p>17 "A. Um... I may have, yes.</p> <p>18 "Q. And what policy violations do you</p> <p>19 believe you may have observed in this case?</p> <p>20 "A. The duty to render -- you know, to</p> <p>21 render aid right away.</p> <p>22 "Q. Did you express concern about that to</p> <p>23 anyone?</p> <p>24 "A. No.</p> <p>25 "Q. And if you have a duty to do so, why is</p> <p>it that you didn't express concern about that to</p> <p>anyone?</p> <p>"A. Because IA was down there, too, and</p> <p>investigated alongside of homicide.</p> <p>"Q. And so are you saying that you believe</p> <p>that any policy violation is something that</p> <p>should have been observed by them?</p> <p>"A. Yes.</p> <p>"Q. Okay. And it was a policy violation</p> <p>that was obvious to you?</p> <p>"A. Yeah."</p> <p>BY MR. BENNETT:</p> <p>Q. Do you recognize that individual?</p> <p>A. Is that Lieutenant Zimmerman?</p> <p>Q. Yeah. Is he the head of Homicide?</p>	261
260	<p>1 A. I think so. I'm not sure.</p> <p>2 Q. At the time of this event?</p> <p>3 A. I -- I believe so.</p> <p>4 Q. All right. Do you disagree with his answers?</p> <p>5 A. I do.</p> <p>6 Q. All right. Which ones?</p> <p>7 A. The rendering aid.</p> <p>8 Q. Okay. Do you think Lieutenant Zimmerman is a</p> <p>9 reasonable police officer?</p> <p>10 A. I don't know him on a... I have had very little</p> <p>11 contact with him.</p> <p>12 Q. How about Captain Huffman?</p> <p>13 A. I've had very little contact with her, as well.</p> <p>14 Q. So you don't have personal opinion as to --</p> <p>15 A. I don't.</p> <p>16 Q. -- either of them?</p> <p>17 You just know that they've risen to the</p> <p>18 ranks that they've risen and have the positions</p> <p>19 that they've held?</p> <p>20 A. I know that, yes.</p> <p>21 Q. Do you have anything bad to say about</p> <p>22 Lieutenant Zimmerman?</p> <p>23 A. I am not familiar with either one of them enough</p> <p>24 to know anything about them.</p> <p>25 Q. Now you have had experience with Deputy Chief</p>	262

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<p style="text-align: right;">263</p> <p>1 and -- and conduct?</p> <p>2 A. What --</p> <p>3 Q. Anybody ever say anything to you about what</p> <p>4 Huffman or Zimmerman said before?</p> <p>5 A. Are you asking if this is the first I've heard</p> <p>6 this?</p> <p>7 Q. Well, all right. That's a good first question.</p> <p>8 Can you answer that?</p> <p>9 A. This is the first I've heard this.</p> <p>10 Q. All right. So then I think the answer to my</p> <p>11 question is that nobody -- it's true then that</p> <p>12 nobody in -- in the Command & Control of the</p> <p>13 Minneapolis Police Department has ever leveled</p> <p>14 the criticism of the type you've heard Zimmerman</p> <p>15 and Huffman utter today?</p> <p>16 A. That's true.</p> <p>17 Q. Okay. No one's --</p> <p>18 MS. FUNDINGSLAND: Mr. --</p> <p>19 BY MR. BENNETT:</p> <p>20 Q. -- said that you need any --</p> <p>21 MR. BENNETT: I'm sorry?</p> <p>22 MS. FUNDINGSLAND: Go ahead. I'm sorry.</p> <p>23 I didn't want to interrupt.</p> <p>24 I was just going to ask to take a break, but</p> <p>25 go ahead.</p>	<p style="text-align: right;">265</p> <p>1 indicates that you're trained.</p> <p>2 (Brian Anderson Embedded Video</p> <p>3 Page 110, Line 14 - Page 112, Line 5)</p> <p>4 "Q. And in terms of medical monitoring, is</p> <p>5 that a passive thing; meaning, you know, 'if I</p> <p>6 happen to notice it, I pay attention to it'?</p> <p>7 "Or were the officers -- or were MPD</p> <p>8 officers trained prior to 2010 that they were</p> <p>9 supposed to actively be making observations</p> <p>10 related to the medical condition of the subject?</p> <p>11 "A. I can't point to specific training as</p> <p>12 far as, 'These are the steps that you have to</p> <p>13 take in order to do it.' But more of a general</p> <p>14 sense of your analysis of the situation that's</p> <p>15 happening of the person that you're dealing</p> <p>16 with.</p> <p>17 "So if it's a person that's talking, making</p> <p>18 sense, then it -- you go a different route;</p> <p>19 where if it was a person that was not</p> <p>20 responding, not doing anything, then you go</p> <p>21 another... I mean it's more general than</p> <p>22 specific.</p> <p>23 "Q. And I think what I hear you saying is</p> <p>24 that if someone is talking, at that point in</p> <p>25 time you're not necessarily concerned that this</p> <p>person might not be breathing because they're</p> <p>talking to you?</p> <p>"A. Correct.</p> <p>"Q. But if you have someone who is wholly</p> <p>unresponsive and not moving, that would tell</p> <p>you, as an officer, 'I should actively inquire</p> <p>into whether or not this person is breathing or</p> <p>is otherwise okay'?</p> <p>"A. Correct.</p> <p>"Q. Okay. And... But in a more general</p> <p>sense, paying attention to the medical condition</p> <p>of a subject, that's an active analysis, isn't</p> <p>it? I mean that's something that you're taught</p> <p>under policy that you're supposed to be paying</p> <p>attention to?</p> <p>"A. Yes.</p> <p>"Q. Once the scene is secured and the</p> <p>subject is secured and the officers have</p> <p>recovered their attention should not be on</p> <p>extraneous things if they have not already</p> <p>inquired into the medical condition of the</p>
<p style="text-align: right;">264</p> <p>1 MR. BENNETT: We can take a break.</p> <p>2 MS. FUNDINGSLAND: Okay.</p> <p>3 MR. BENNETT: This is a fine time.</p> <p>4 MS. FUNDINGSLAND: Okay. Thank you.</p> <p>5 MR. BENNETT: And, you know, I mean if</p> <p>6 you want to take a break, any of you, at any</p> <p>7 time, we'll do it.</p> <p>8 MS. FUNDINGSLAND: I just didn't mean to</p> <p>9 interrupt you.</p> <p>10 VIDEOGRAPHER: Off the video record at</p> <p>11 10:35 A.M.</p> <p>12 (Recess taken.)</p> <p>13 VIDEOGRAPHER: This is Disc Number 2.</p> <p>14 We are on the record at 10:49 A.M.</p> <p>15 BY MR. BENNETT:</p> <p>16 Q. Has anyone given you training specifically to</p> <p>17 help you learn from this event, since the event?</p> <p>18 A. No.</p> <p>19 Q. Is there training you think you could have</p> <p>20 gotten or the city should have given you to</p> <p>21 prevent this event, the death of David Smith?</p> <p>22 A. I'm not aware of any.</p> <p>23 Q. Okay. I'd like to go back and talk about</p> <p>24 medical monitoring a bit.</p> <p>25 Here's how the city's official designee</p>	<p style="text-align: right;">266</p> <p>1 subject?</p> <p>2 "A. Yes."</p> <p>3 BY MR. BENNETT:</p> <p>4 Q. Have you been in train- -- have you been trained</p> <p>5 in accordance with the principles set forth in</p> <p>6 -- by Sergeant Anderson in the prior discussion</p> <p>7 there?</p> <p>8 A. I don't know.</p> <p>9 Q. Well, really wasn't he -- didn't he just, in a</p> <p>10 sense, give a -- an official answer for what you</p> <p>11 and I just talked about before we went off the</p> <p>12 record; in other words, you wouldn't have to</p> <p>13 assess me because I'm talking, I'm responding,</p> <p>14 you're -- you know, you're able to make physical</p> <p>15 observations of me enough to know I'm okay;</p> <p>16 correct?</p> <p>17 A. I don't recall specific training on specific</p> <p>18 steps.</p> <p>19 Q. Okay. Well, do you remember it being sort of an</p> <p>20 active inquiry, an active analysis, an active</p> <p>21 assessment of things to make sure that it --</p> <p>22 that someone doesn't die by mistake?</p> <p>23 A. I don't know that it was -- there was given any</p> <p>24 training -- any training given at all</p> <p>25 specifically on that other than what just the</p>

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<p style="text-align: right;">267</p> <p>1 manual says.</p> <p>2 Q. So you disagree with -- with what</p> <p>3 Sergeant Anderson says about the need for active</p> <p>4 analysis?</p> <p>5 A. I -- I'm not necessarily disagreeing. I'm</p> <p>6 saying that I'm not aware of it.</p> <p>7 Q. I thought you were telling me that, at least</p> <p>8 when we had the interlude where we talked about</p> <p>9 you and me, remember, --</p> <p>10 A. Yes.</p> <p>11 Q. -- before we went off the record?</p> <p>12 That -- and I thought you were basically</p> <p>13 making the same point as Sergeant Anderson; that</p> <p>14 is, you know, there's certain situations,</p> <p>15 probably many situations where it's obvious--you</p> <p>16 know, the person is okay because he's talking to</p> <p>17 you and moving or responding appropriately to</p> <p>18 questions that are being asked. You hear him,</p> <p>19 you know, know by that fact that he's breathing</p> <p>20 and likely that his heart is functioning. At</p> <p>21 least he's not complaining about it; correct?</p> <p>22 A. Yes.</p> <p>23 Q. And when you've got somebody that's wholly</p> <p>24 unresponsive you'd agree with me that you need</p> <p>25 to be more active in your assessment of his</p>	<p style="text-align: right;">269</p> <p>1 Q. Well, there's specific requirement of it in your</p> <p>2 policy for conductive energy -- conductive</p> <p>3 energy device or a Taser; correct?</p> <p>4 A. The -- yes.</p> <p>5 Q. But -- but the need -- as -- as -- as these</p> <p>6 things -- as force increases, as -- as you have</p> <p>7 usage of conductive energy devices, as you have</p> <p>8 use of the prone restraint, all of those things</p> <p>9 would, combined with unresponsiveness, would</p> <p>10 lead you to ratchet up the level of active</p> <p>11 assessment and analysis that the officer has to</p> <p>12 do; correct?</p> <p>13 A. I don't know. I -- not necessarily.</p> <p>14 Q. Why?</p> <p>15 A. He was unresponsive from the entire time we got</p> <p>16 there other than the two words he said and the</p> <p>17 physical actions that he took. Verbally he was</p> <p>18 unresponsive the entire time.</p> <p>19 Q. Well, so then you're going to have to get</p> <p>20 appropriate non-verbal... So if you're not</p> <p>21 getting any information verbally, you're going</p> <p>22 to have to get it non-verbally, by signs;</p> <p>23 correct?</p> <p>24 A. I didn't have any reason to believe that he was</p> <p>25 in distress until I did realize he was in</p>
<p style="text-align: right;">268</p> <p>1 condition; correct?</p> <p>2 A. He was unresponsive in a number of ways through</p> <p>3 that entire encounter with him.</p> <p>4 Q. All right. But you didn't answer my question.</p> <p>5 If someone was --</p> <p>6 A. He was continuing to do what he had been doing</p> <p>7 through much of the encounter.</p> <p>8 Q. All right. Let's go back. If someone is</p> <p>9 unresponsive the need for active assessment and</p> <p>10 analysis is greater; correct?</p> <p>11 A. It could be.</p> <p>12 Q. Well, how about it could be -- and -- well, all</p> <p>13 right. It could be. Let's take that answer.</p> <p>14 It could be and the need for active analysis and</p> <p>15 assessment would increase if you use force on</p> <p>16 someone; correct?</p> <p>17 A. It could.</p> <p>18 Q. It would -- the need for active analysis and</p> <p>19 assessment would increase if you use a</p> <p>20 conductive energy device on them multiple times;</p> <p>21 correct?</p> <p>22 A. In -- in -- the conductive device is considered</p> <p>23 a low level of force just like Mace. And I</p> <p>24 would monitor in the same way that I would any</p> <p>25 kind of force.</p>	<p style="text-align: right;">270</p> <p>1 distress.</p> <p>2 Q. You know, others can judge whether... I mean</p> <p>3 you've seen people that disagreed with the</p> <p>4 medical monitoring you've done already, haven't</p> <p>5 you, in this case? You've seen the evidence of</p> <p>6 Zimmerman and Huffman?</p> <p>7 A. That's what they said, yes.</p> <p>8 Q. Yeah. And they looked at the evidence.</p> <p>9 A. I -- I don't know what they looked at.</p> <p>10 Q. Okay.</p> <p>11 A. I'm assuming they looked at what you --</p> <p>12 Q. All right.</p> <p>13 A. -- what you showed them.</p> <p>14 Q. Well, you'd agree that active assessment and</p> <p>15 analysis is required dependent on the level of</p> <p>16 force, type of force and -- and the activities</p> <p>17 or responsiveness of the individual you use</p> <p>18 force on? True or false?</p> <p>19 A. I feel we did that.</p> <p>20 Q. Well, is it -- is that true?</p> <p>21 A. Say it again.</p> <p>22 Q. Let's take it in the abstract before we talk</p> <p>23 about David Smith.</p> <p>24 I'm not... If you use force on someone --</p> <p>25 somebody, the need for an active assessment is</p>

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<p style="text-align: right;">271</p> <p>1 greater than if you don't use force on someone; 2 correct? 3 A. I mean I think we're hung up on whether -- are 4 you asking me what I've done in the past? 5 Q. Well, I'm asking you about the training. He's 6 talked about active analysis and assessment. 7 A. I'm not familiar with -- with active analysis. 8 Q. Well, if I'm not talking to you how are you 9 going to determine if I'm breathing if I'm -- 10 especially if I'm face down and not moving? 11 A. Well, you're looking at me. 12 Q. I'm looking at you, but if I -- 13 A. You don't appear to be unconscious. 14 Q. Well, now you -- when you went down to say, 15 "You better not have broke my jaw, mother 16 fucker..." Or "Mother fucker, you better not 17 have broke my jaw," his eyes were wide open, 18 weren't they? 19 A. They were open. 20 Q. They hadn't blinked? 21 A. I wasn't -- I didn't look at him long -- 22 Q. Well, -- 23 A. -- enough to -- 24 Q. -- you're supposed to look, aren't you? 25 A. -- to determine if he was blinking his eyes.</p>	<p style="text-align: right;">273</p> <p>1 A. Yes. 2 Q. So you're discussing a felony charge. 3 And then you say -- then you say, "Squad 10, 4 we need a supervisor," because you've used 5 force; right? 6 A. Yes. 7 Q. Okay. And it's at this point that Gorman is 8 using his right hand to hold Smith's head down; 9 correct? 10 A. Yes. 11 Q. And you talk about Assault 4 right after you get 12 him handcuffed. And then at the -- at 2:32 13 there's more talk about assault in the 14 4th degree; correct? 15 A. When I say, "I don't even think we can," I'm 16 referring to trying to take him in the elevator 17 with a -- standing up. 18 Q. And what does Gorman say? 19 A. Well, he doesn't -- he doesn't realize what I'm 20 talking about. He says, "We'll book him for 21 Assault 4 for sure." 22 Q. Okay. So again there's -- there's continuous 23 talk... And this is after the -- after the 24 moaning stops; correct? The -- his -- the 25 initial moaning; correct? Do you remember him</p>
<p style="text-align: right;">272</p> <p>1 Q. Okay. 2 A. Eyes open would be an indicator that -- to me 3 that he was conscious. 4 Q. Well, let's -- let's look at what you were 5 doing. Let's look at what you were doing. 6 If you look at Exhibit 30, that's the 7 transcript. And so we can just -- we can focus 8 on the transcript you agreed to. 9 If you look at Exhibit 30... At 1:15 you got 10 him handcuffed; correct? 11 A. Yes. 12 Q. And then you talk about what you're going to 13 charge him with, you and -- you and Gorman. 14 You say, "He punched me in the face." 15 He says, "Now we go to Assault 4"; correct? 16 A. Officer Gorman said that, yes. 17 Q. Well, in response to your saying -- 18 A. Well, I was making -- I was just making a 19 comment that he punched me in the face. 20 Q. And all right. So you -- so Gorman then goes to 21 Assault 4, which is what? 22 A. Assault on a police officer. 23 Q. I mean you have to be struck; right? 24 A. Yes. 25 Q. It's a felony; right?</p>	<p style="text-align: right;">274</p> <p>1 kind of wiggling around a little bit? And 2 Gorman hits him in the head? 3 A. You're asking me if this is correct. I'm going 4 by what this says here. The groaning starts, it 5 says, and then the groaning stops. 6 Q. Okay. At 2:32, though, there's more talk about 7 what to book him for; correct? 8 A. Yes. 9 Q. So if you had the time and the opportunity to 10 discuss whether you could charge David for 11 assault in the 4th degree, would you agree that 12 you had the time and the opportunity to assess 13 his breathing? 14 A. I didn't have reason to believe that that was 15 needed. I thought he was breathing. 16 Q. Is that yes or no? 17 A. I thought he was breathing. 18 Q. Answer the question. 19 A. I used that time that you're saying, "Didn't I 20 have time to assess..." I thought he was. 21 Q. Did you do anything during that time period to 22 assess his breathing? 23 A. No. Just like I'm not doing anything to see if 24 you are. He was making -- 25 Q. But --</p>

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275	<p>1 A. -- noises --</p> <p>2 Q. -- I'm talking to you; right?</p> <p>3 A. He was making noises, as well.</p> <p>4 Q. Okay. All right. Well, would you --</p> <p>5 A. He was not verbally responsive to me ever. It</p> <p>6 was not unusual to me at that point that he was</p> <p>7 not answering my questions.</p> <p>8 Q. If you had the time and opportunity to discuss</p> <p>9 what you could charge him for, would you agree</p> <p>10 that you had the time and opportunity to assess</p> <p>11 his level of consciousness?</p> <p>12 A. I believe I was doing that.</p> <p>13 Q. Okay. You're... And how were you doing that?</p> <p>14 What actively were you doing then?</p> <p>15 A. Just by being next to him. He was making</p> <p>16 noises.</p> <p>17 Q. At -- and that's from -- when was he making</p> <p>18 noises?</p> <p>19 A. I don't know.</p> <p>20 Q. Are the -- do you agree that the noises were, as</p> <p>21 indicated in -- on the timeline in Exhibit 30?</p> <p>22 I believe you have indicated that's...</p> <p>23 A. I -- it says that here.</p> <p>24 Q. Okay. And you remember hearing that on the</p> <p>25 video; right?</p>	277	<p>1 A. Based on the fact that I was just there. That I</p> <p>2 was -- that -- as I said, whatever sounds he was</p> <p>3 making, he's making sounds.</p> <p>4 Q. All right. That's in the moaning and yelling</p> <p>5 phase, you believed he was -- that was -- that</p> <p>6 he was --</p> <p>7 A. I --</p> <p>8 Q. -- breathing air?</p> <p>9 A. -- believed that he was breathing.</p> <p>10 Q. Okay. Then did you do anything to assess his</p> <p>11 breathing during the agonal breathing or</p> <p>12 groaning stage?</p> <p>13 A. No.</p> <p>14 Q. Did you do anything to assess his pulse at that</p> <p>15 time?</p> <p>16 A. Well, again, I -- I didn't specifically check</p> <p>17 those things because I thought that he was</p> <p>18 because of the fact that he was making noises.</p> <p>19 Q. Well, what, if anything, did you do to actively</p> <p>20 medical monitor him during the groaning phase?</p> <p>21 Just hear him groan?</p> <p>22 A. Just being there is -- is -- and seeing him is</p> <p>23 monitoring him.</p> <p>24 Q. Well, except you guys were talking about every</p> <p>25 other thing; right? You were talking about what</p>
276	<p>1 A. Yes.</p> <p>2 Q. You heard it the night you downloaded it and</p> <p>3 watched it with your wife?</p> <p>4 A. Oh, I -- I don't know that I was watching it as</p> <p>5 detailed as that, that I would pick up where and</p> <p>6 when.</p> <p>7 Q. Well, did you hear the --</p> <p>8 A. I heard the -- I heard the audio of the video.</p> <p>9 Q. Okay. Well, you didn't do anything to determine</p> <p>10 if he had a pulse at -- or what his pulse was</p> <p>11 during the moaning period, correct, according to</p> <p>12 Exhibit 30?</p> <p>13 A. No.</p> <p>14 Q. You didn't do anything to determine if he had a</p> <p>15 pulse at the groaning or agonal breathing part,</p> <p>16 which is what -- is what the IA calls groaning;</p> <p>17 correct?</p> <p>18 A. No.</p> <p>19 Q. And you didn't do anything to assess his</p> <p>20 breathing at -- during the moaning and yelling</p> <p>21 phase; correct?</p> <p>22 A. I didn't put a mirror down to make -- as they do</p> <p>23 sometimes, to see if breath was coming out. I</p> <p>24 thought that it was.</p> <p>25 Q. Well, based on what facts?</p>	278	<p>1 to charge him with; right?</p> <p>2 A. Yes.</p> <p>3 Q. You talk about the quality of the fight, "It was</p> <p>4 a hell of a fight."</p> <p>5 The number of times you tased him; right?</p> <p>6 A. Yep.</p> <p>7 Q. You talk about the blow you received and where</p> <p>8 you received it?</p> <p>9 A. Yes.</p> <p>10 Q. And -- and what -- and what your health</p> <p>11 condition is with regard to the blow; right?</p> <p>12 A. Yes.</p> <p>13 Q. You can't bite down. You've got, you know...</p> <p>14 You do that; right?</p> <p>15 A. Yes.</p> <p>16 Q. So... And while you're doing all that and -- he</p> <p>17 -- there's no sound after the groaning stops, is</p> <p>18 there? There's nothing?</p> <p>19 A. I -- I -- that's what this says, yes.</p> <p>20 Q. Do you agree?</p> <p>21 A. I -- yes.</p> <p>22 Q. In fact, you -- you understand that Andrew Baker</p> <p>23 says his last voluntary sound was the end of the</p> <p>24 moaning period, as it's referred to on</p> <p>25 Exhibit 30?</p>

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<p style="text-align: right;">279</p> <p>1 MR. OSBORNE: Object, foundation.</p> <p>2 BY MR. BENNETT:</p> <p>3 Q. Are you aware of that? Have you read his</p> <p>4 deposition?</p> <p>5 A. I have not read his deposition.</p> <p>6 Q. Okay. But you talk about the fight, your</p> <p>7 injuries, your health. If you had time to do</p> <p>8 that did you have time to stick your hand down</p> <p>9 and see if he was breathing, see if you could</p> <p>10 feel expiration?</p> <p>11 A. (Pausing.)</p> <p>12 Q. Yes or no?</p> <p>13 A. That's not something that I've ever done before.</p> <p>14 Q. That's not -- did you have time to do it?</p> <p>15 A. I probably did.</p> <p>16 Q. Did you have time to check his pulse like you</p> <p>17 did well after he was -- his heart had stopped?</p> <p>18 A. Probably.</p> <p>19 Q. Did you have time to monitor his level of</p> <p>20 consciousness?</p> <p>21 A. I thought I was doing that.</p> <p>22 Q. Well, what about -- is -- I mean if a person is</p> <p>23 nonresponsive how can you determine or assess</p> <p>24 whether he's conscious? What would you do?</p> <p>25 A. That was not -- he was not responsive --</p>	<p style="text-align: right;">281</p> <p>1 A. I told you I thought he was.</p> <p>2 Q. Okay.</p> <p>3 A. There was no reason to check.</p> <p>4 Q. Well, doesn't policy tell you to check when you</p> <p>5 Tase somebody and you use --</p> <p>6 A. I was -- I was being -- I was there with him and</p> <p>7 I thought that he was just basically being</p> <p>8 quiet.</p> <p>9 Q. What active steps did you do to check other</p> <p>10 than --</p> <p>11 A. I --</p> <p>12 Q. -- before you took his pulse?</p> <p>13 A. Eventually I took his pulse.</p> <p>14 Q. That's the only active step you took?</p> <p>15 A. I was there with him.</p> <p>16 Q. So you think just being there, talking about</p> <p>17 other things is medically monitoring, is that</p> <p>18 what you say?</p> <p>19 A. Again, in the same sense that we're talking.</p> <p>20 I can see that you're okay. I thought he was</p> <p>21 okay.</p> <p>22 Q. What were the facts that you used to...</p> <p>23 After -- after the groaning stopped what</p> <p>24 facts did you -- what observable facts did you</p> <p>25 have to --</p>
<p style="text-align: right;">280</p> <p>1 Q. Just --</p> <p>2 A. -- period.</p> <p>3 Q. -- answer the question.</p> <p>4 A. I'm trying to answer it.</p> <p>5 Q. I didn't ask you --</p> <p>6 A. This is a specific situation for this specific</p> <p>7 thing.</p> <p>8 Q. Well, what would you do to determine a level of</p> <p>9 consciousness of someone who is nonresponsive?</p> <p>10 Just answer that specific question.</p> <p>11 A. If I thought they were nonresponsive from a</p> <p>12 medical condition I would check their breathing</p> <p>13 and their pulse.</p> <p>14 I thought he was being nonresponsive because</p> <p>15 that's just the way he was the whole time we</p> <p>16 were with him.</p> <p>17 Q. You didn't do anything to differentiate the two,</p> <p>18 though, did you?</p> <p>19 A. I wasn't concerned that he wasn't breathing at</p> <p>20 that time.</p> <p>21 Q. But what did you do to medically monitor him</p> <p>22 before you put -- took his pulse at the 7:50</p> <p>23 mark?</p> <p>24 A. I didn't do anything other than I was there.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">282</p> <p>1 A. Again, I was going based on his prior behavior.</p> <p>2 Q. Well, but... His prior behavior isn't what</p> <p>3 you...</p> <p>4 You medically monitor someone after you take</p> <p>5 them in custody, as their behavior is unfolding,</p> <p>6 after you take them into custody; correct?</p> <p>7 A. But the policy also says changes in</p> <p>8 consciousness -- or changes in status. And he</p> <p>9 was the same status as he had been before, --</p> <p>10 Q. Well, --</p> <p>11 A. -- as far as verbally goes.</p> <p>12 We had him restrained so he wasn't moving</p> <p>13 anymore, but he wasn't -- he was also being</p> <p>14 verbally nonresponsive, which is what he had</p> <p>15 been prior.</p> <p>16 Q. Well, you asked him... He's asked six questions</p> <p>17 by you and Gorman. At 1:46, 3:01, 3:47, 4:34,</p> <p>18 5:55 and 7:09, if you look at Exhibit 30.</p> <p>19 Do you want to look at those times?</p> <p>20 A. I -- I see the questions.</p> <p>21 Q. None were -- no answer was given to any</p> <p>22 question; correct?</p> <p>23 A. And we asked him many questions when we first</p> <p>24 got there and he was nonresponsive.</p> <p>25 Q. Well, yeah. But when you first got there you</p>

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283	<p>1 hadn't used force on him; right?</p> <p>2 A. Correct.</p> <p>3 Q. You hadn't used the Taser five times?</p> <p>4 A. Correct.</p> <p>5 Q. You hadn't put him in the force -- a prone</p> <p>6 restraint position and knelt on his back for</p> <p>7 4-1/2 minutes?</p> <p>8 A. You keep using "prone restraint position."</p> <p>9 That's not -- that's not in our manual. I -- we</p> <p>10 don't -- I don't know what you're --</p> <p>11 Q. Well, everybody else says it's a prone restraint</p> <p>12 position.</p> <p>13 A. Well, everybody --</p> <p>14 Q. All your other officers.</p> <p>15 A. Well, everybody understands what "prone" and</p> <p>16 "restraint" means, but it's not something that</p> <p>17 we're trained on. It's not a maneuver to my</p> <p>18 knowledge.</p> <p>19 Q. Okay. Well, the video and the IA transcript</p> <p>20 indicate over a period of 5-1/2 minutes you or</p> <p>21 Gorman asked David Smith these six different</p> <p>22 questions without receiving a single verbal or</p> <p>23 non-verbal response; correct?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. During that time you had the opportunity,</p>	285	<p>1 THE WITNESS: I checked his pulse when I</p> <p>2 -- when I became concerned that he was in</p> <p>3 distress.</p> <p>4 BY MR. BENNETT:</p> <p>5 Q. Why don't you answer the question I asked?</p> <p>6 A. I am answering the question.</p> <p>7 Q. No, you aren't.</p> <p>8 A. You want to know why I didn't do it sooner. I</p> <p>9 don't know why he -- I thought he was fine. I</p> <p>10 checked it when I became concerned.</p> <p>11 Q. The first time you checked it was -- was at the</p> <p>12 7:50 mark, as indicated on there, though;</p> <p>13 correct?</p> <p>14 MS. FUNDINGSLAND: Objection, asked and</p> <p>15 answered.</p> <p>16 BY MR. BENNETT:</p> <p>17 Q. And I'm talking about the 5-1/2 minutes between</p> <p>18 1:46 and 7:09 when you're asking him these</p> <p>19 questions. Nobody ever took his pulse, did</p> <p>20 they?</p> <p>21 A. I didn't have reason to check it at that time.</p> <p>22 Q. That's not the question.</p> <p>23 Nobody took it, did they?</p> <p>24 A. I didn't do a lot of things between that period</p> <p>25 of time.</p>
284	<p>1 if you wanted to, to check on or assess David</p> <p>2 Smith's breathing; would you agree?</p> <p>3 A. In the -- are -- is your question in -- to the</p> <p>4 sense of taking a pulse?</p> <p>5 Q. I -- I'm saying whatever you would do to check</p> <p>6 on or assess David Smith's breathing, you had</p> <p>7 the opportunity during that 5-1/2 minutes to do</p> <p>8 it; correct?</p> <p>9 A. Which I thought I was doing.</p> <p>10 Q. Okay. But you -- but you agree you had the</p> <p>11 opportunity?</p> <p>12 A. Yes.</p> <p>13 Q. You agree that you had the opportunity to take</p> <p>14 David Smith's pulse, but did not?</p> <p>15 A. Again, I wouldn't take your pulse right now.</p> <p>16 I thought that he was breathing --</p> <p>17 Q. I'm not asking if you'd take my pulse.</p> <p>18 In the 5 minutes you asked him unanswered</p> <p>19 questions you had the ability -- after you'd</p> <p>20 used force on him, a Taser, and where he was</p> <p>21 being knelt on by you and -- and -- and Gorman,</p> <p>22 you had the opportunity to -- to assess his --</p> <p>23 to take his pulse like you did later on?</p> <p>24 MS. FUNDINGSLAND: Object to the form of</p> <p>25 the question and compound.</p>	286	<p>1 Q. You didn't get off him either, --</p> <p>2 A. It was --</p> <p>3 Q. -- did you?</p> <p>4 A. It was not taken between the time that you are</p> <p>5 indicating.</p> <p>6 Q. Nothing was stopping you from taking his pulse?</p> <p>7 A. No.</p> <p>8 Q. Nothing was stopping you from turning him on his</p> <p>9 side?</p> <p>10 A. We didn't turn him on his side for the reason</p> <p>11 that has already been stated. We were not -- we</p> <p>12 didn't know if he was done --</p> <p>13 Q. You --</p> <p>14 A. -- resisting.</p> <p>15 Q. You never turned him on his side?</p> <p>16 A. No.</p> <p>17 Q. The -- you talked right -- you and Gorman talked</p> <p>18 right over the -- his agonal breathing, didn't</p> <p>19 you?</p> <p>20 A. I don't know.</p> <p>21 Q. Well, doesn't the transcript and the video</p> <p>22 reflect that? Groaning starts at 2:37 and ends</p> <p>23 at 3:01, so there's 23 seconds of agonal</p> <p>24 breathing if you -- if you credit this</p> <p>25 transcript; okay?</p>

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<p style="text-align: right;">287</p> <p>1 A. Okay.</p> <p>2 Q. And during that time Gorman is recorded as</p> <p>3 saying, "Never get the drugs out on time."</p> <p>4 Do you remember that?</p> <p>5 A. That's the first I've ever read that. I don't</p> <p>6 recall ever hearing that. I don't know what it</p> <p>7 means.</p> <p>8 Q. You say at 2:50, "I can't believe he punched me</p> <p>9 in the face." You remember saying that, don't</p> <p>10 you?</p> <p>11 A. I do remember saying that.</p> <p>12 Q. And then Gorman responds, "Yeah, he did." And</p> <p>13 then you say I got all that -- "I got that all</p> <p>14 on here," and you tapped your pen camera, don't</p> <p>15 you?</p> <p>16 A. It looks that way, yes.</p> <p>17 Q. And he says, "Good"; correct?</p> <p>18 A. Yep.</p> <p>19 Q. And then he says, "Dave, what are you on, man?</p> <p>20 What are you on? Dave, Dave, Dave, what are you</p> <p>21 on?" He gets no re- -- and that's while he's</p> <p>22 making this agonal breathing sound, isn't it?</p> <p>23 A. That's what it says here.</p> <p>24 Q. What did you think that sound was?</p> <p>25 A. I -- I did not recognize it for what -- as what</p>	<p style="text-align: right;">289</p> <p>1 Q. -- the --</p> <p>2 A. You're -- you're asking me a question that</p> <p>3 can't -- I have to explain it.</p> <p>4 I didn't recognize it as a problem and so I</p> <p>5 didn't do anything medically to treat it as a</p> <p>6 problem.</p> <p>7 Q. Did you do anything during that period other</p> <p>8 than talk to Gorman and tap your pen camera?</p> <p>9 A. No.</p> <p>10 Q. Okay. Now after the groaning stops, movement</p> <p>11 and any sound at all ceased on David Smith;</p> <p>12 correct?</p> <p>13 A. I'm not sure. I don't know.</p> <p>14 Q. Well, that makes sense, doesn't it? Didn't you</p> <p>15 describe any movement --</p> <p>16 A. No, I didn't.</p> <p>17 Q. -- or sound that you remember after that --</p> <p>18 A. Not --</p> <p>19 Q. -- period?</p> <p>20 A. -- that I... Not... I mean if we're going to</p> <p>21 go based on exact second... I don't know.</p> <p>22 Q. Well, do you remember after the groaning --</p> <p>23 after that sound --</p> <p>24 A. I --</p> <p>25 Q. -- stopped?</p>
<p style="text-align: right;">288</p> <p>1 a medical examiner is calling it.</p> <p>2 Q. Well, what did you do in response to that sound?</p> <p>3 A. I just thought it was him making noise. I</p> <p>4 didn't under -- I don't -- I'm not -- I'm not a</p> <p>5 doctor.</p> <p>6 Q. I -- I asked you a simple question. What did</p> <p>7 you do in response to hearing --</p> <p>8 A. And --</p> <p>9 Q. -- that sound?</p> <p>10 A. And I said I didn't recognize it as distressed</p> <p>11 breathing, so I didn't do --</p> <p>12 Q. Well, the answer is "Nothing"?</p> <p>13 A. That's right.</p> <p>14 MS. FUNDINGSLAND: Would you let him</p> <p>15 finish his answer, please?</p> <p>16 MR. BENNETT: I'd like -- but --</p> <p>17 MS. FUNDINGSLAND: Well, let him finish</p> <p>18 his answer.</p> <p>19 MR. BENNETT: Whether he recognizes it</p> <p>20 or not...</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. I asked, "What did you do?" Not, "What did you</p> <p>23 think?" Not where you were on the 4th of July.</p> <p>24 I asked you what did you do in response to --</p> <p>25 A. Okay.</p>	<p style="text-align: right;">290</p> <p>1 A. I do from watching the tape. Not at the time.</p> <p>2 Q. All right. Has there -- has there any...</p> <p>3 Well, you were talking at the time; right?</p> <p>4 A. Yes.</p> <p>5 Q. So were you being vigilant?</p> <p>6 A. Again, we're talking, as well.</p> <p>7 I didn't have reason to believe that he was</p> <p>8 in distress.</p> <p>9 Q. Well, doesn't your training say that you're</p> <p>10 supposed to turn him over once he's adequately</p> <p>11 controlled?</p> <p>12 A. If you're using a maximal restraint, that's</p> <p>13 correct.</p> <p>14 Q. Everybody said -- you heard Fors say, --</p> <p>15 A. Well, --</p> <p>16 Q. -- you heard Sergeant Anderson --</p> <p>17 A. -- that's --</p> <p>18 Q. -- say...</p> <p>19 That's your tortured interpretation of it.</p> <p>20 Has any -- did you hear other officers say</p> <p>21 different? Did you watch it on the screen</p> <p>22 there?</p> <p>23 A. I'm not sure that you -- they read that correct</p> <p>24 -- you gave them the correct information from</p> <p>25 that policy or what policy you were reading</p>

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<p style="text-align: right;">291</p> <p>1 from.</p> <p>2 Q. Well, --</p> <p>3 A. If you had displayed that policy in front of</p> <p>4 them and they were reading from it they would</p> <p>5 not have said --</p> <p>6 Q. So you didn't...</p> <p>7 That's what they're taught generally, too;</p> <p>8 right?</p> <p>9 A. No.</p> <p>10 Q. Okay. Well, --</p> <p>11 A. Not to my knowledge.</p> <p>12 Q. Okay. Then after the groaning stops you talk</p> <p>13 about whether you tased him five or six times or</p> <p>14 four; right?</p> <p>15 A. Yes.</p> <p>16 Q. And there's some more unanswered questions and</p> <p>17 statements that Gorman makes to him; correct?</p> <p>18 A. Yes.</p> <p>19 Q. And then you say, "You're going to talk to us,</p> <p>20 man. Dave, you're going to talk to us. What's</p> <p>21 wrong with you?" No response. That's at 4:34.</p> <p>22 Right?</p> <p>23 A. Okay. Yes.</p> <p>24 Q. Well, is that what's --</p> <p>25 A. That's what it says there.</p>	<p style="text-align: right;">293</p> <p>1 time, every second, between these -- these</p> <p>2 time frames that you're saying, but I was under</p> <p>3 the impression that he was breathing.</p> <p>4 Q. Did you do anything to check?</p> <p>5 A. I didn't do anything --</p> <p>6 Q. Between 3:01 --</p> <p>7 A. I didn't do anything --</p> <p>8 Q. -- and 5:41?</p> <p>9 A. I didn't do anything specific.</p> <p>10 Q. Okay. Did you do anything to check his pulse</p> <p>11 between that time?</p> <p>12 A. No, I didn't.</p> <p>13 Q. Did you do anything to see if he was conscious</p> <p>14 during that time?</p> <p>15 A. No, I didn't.</p> <p>16 Q. You assumed, without actually assessing, that he</p> <p>17 was breathing; correct?</p> <p>18 A. Based on his prior behavior, yes.</p> <p>19 Q. You assumed, without actually assessing whether</p> <p>20 he was conscious?</p> <p>21 A. Again, based on his prior behavior, yes.</p> <p>22 Q. You assumed, without having checking, that he</p> <p>23 had a pulse?</p> <p>24 A. Until I did check his pulse.</p> <p>25 Q. I understand.</p>
<p style="text-align: right;">292</p> <p>1 Q. Do you remember saying that?</p> <p>2 A. That's what it says here, yes.</p> <p>3 Q. And then another almost minute goes by with</p> <p>4 nothing happening; right? And you say, "Well, I</p> <p>5 hope we're not going to wait for somebody to get</p> <p>6 done with roll call."</p> <p>7 A. I thought that was before that, but I could be</p> <p>8 mistaken.</p> <p>9 Q. Well, you said you didn't have any problem with</p> <p>10 this transcript, so that's why I'm going from</p> <p>11 this. This is a --</p> <p>12 A. Well, I do have some problems with this</p> <p>13 transcript.</p> <p>14 Q. Okay.</p> <p>15 A. I said that to you earlier.</p> <p>16 Q. All right. Well, we can -- we can do this by</p> <p>17 looking at the time, but you...</p> <p>18 Did you do anything to medically monitor him</p> <p>19 between 3:01 and 5:41? You can answer that yes</p> <p>20 or no. I don't need your thought process.</p> <p>21 A. I don't think I can answer it yes or no.</p> <p>22 Q. Well, what did you do to -- to actively assess</p> <p>23 his condition?</p> <p>24 A. I was there and I was looking at him. His...</p> <p>25 Again, I wasn't looking at him 100% of the</p>	<p style="text-align: right;">294</p> <p>1 A. Yes.</p> <p>2 Q. But until that very first time at the 7:50 mark</p> <p>3 you assumed, without checking, that he had a</p> <p>4 pulse?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Can you tell me anything that Gorman did</p> <p>7 to assess -- actively assess his breathing at</p> <p>8 any time?</p> <p>9 A. I... The only thing I could refer to is that</p> <p>10 when I asked if -- "Is he breathing" and</p> <p>11 Officer Gorman looked at him and said, "Uh-huh"</p> <p>12 or said "Yes," in the affirmative. So that's</p> <p>13 the only thing I can point to.</p> <p>14 Q. Well, actually didn't Gorman say -- and it's --</p> <p>15 you can hear it on the Taser and Exhibit 34. I</p> <p>16 think I can get that out there... Or 33.</p> <p>17 When you asked the rhetorical question,</p> <p>18 "Is he breathing?" Do you remember that?</p> <p>19 A. Yes.</p> <p>20 Q. He says what?</p> <p>21 A. It doesn't say that in mine.</p> <p>22 Q. No. This is the other exhibit. This is the</p> <p>23 Taser --</p> <p>24 A. All --</p> <p>25 Q. -- video.</p>

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<p style="text-align: right;">295</p> <p>1 A. -- he says is -- all he says is "Uh-huh." 2 Q. Well, what does he say? "Uh-huh, he's fine?" 3 A. No, it doesn't say that here. 4 Q. You're talking about the wrong exhibit. 5 MR. STORMS: Give him the other exhibit. 6 BY MR. BENNETT: 7 Q. I can give you... This is 33. This is the 8 Taser video and -- 9 A. Oh. 10 Q. -- you've got the... 11 A. Okay. 12 Q. So -- 13 A. I don't recall him saying that. I thought -- I 14 recall him saying, "He's fine." I don't recall 15 him saying, "He's just pretending." 16 MR. BENNETT: We can -- you can hear it 17 on... 18 MR. STORMS: Yeah. 19 BY MR. BENNETT: 20 Q. The -- well, assume he says that. 21 Did you remember -- you don't remember him 22 saying, "Uh-huh. He's just pretending?" 23 A. I remember him saying, "He's fine. I don't 24 remember the, "He's just pretending." 25 Q. You don't suppose Jason Case just made that up,</p>	<p style="text-align: right;">297</p> <p>1 anything to assess his breathing? 2 A. I don't recall. I don't recall him doing 3 anything specific. 4 Q. Same thing with the pulse? 5 A. To my recollection I'm the only one who checked 6 the pulse. 7 Q. I think that's right. 8 How about his level of consciousness? Did 9 you do anything to -- to have him assess his 10 level of consciousness? 11 A. I don't know. I -- I don't know if he was doing 12 the same thing that I was doing. 13 Q. Well... So is it your testimony that you were 14 being vigilant with regard to the medical 15 monitoring of David Smith? 16 A. Not -- what do you mean by "vigilant"? 17 Q. I mean what the common use of the word 18 "vigilant" means. You were paying attention to 19 it. 20 A. I was under the impression that he was okay -- 21 Q. Okay. 22 A. -- until I realized he wasn't. 23 Q. I know. But you were involved -- you were 24 involved in all these extraneous things. 25 You were talking about the charge; right?</p>
<p style="text-align: right;">296</p> <p>1 do you? 2 A. Well, he got the -- what you referred to as 3 "Mope" wrong. 4 Q. Well, he referred to it. I just... You know. 5 A. Well, he got that wrong, though, didn't he? 6 Q. Okay. Did -- did he get -- did you listen to 7 the Taser video, though, too? 8 A. I've only seen that one time and it was two 9 years ago. 10 Q. Okay. Did... As far as you know, though, 11 did -- did Gorman do anything before you 12 checked -- 13 A. I don't know. 14 Q. And just let me get the question... I know -- I 15 know you know what I'm going to ask... 16 A. Okay. 17 Q. But before you checked David Smith's pulse did 18 Officer Gorman do anything, to your knowledge, 19 to assess his pulse? 20 A. I don't know. 21 Q. Did he do anything, to your knowledge, to assess 22 his breathing? 23 A. He was very close to his head. I don't know if 24 he was -- if he thought he was breathing or not. 25 Q. Well, let me ask you this. Did you see him do</p>	<p style="text-align: right;">298</p> <p>1 A. We were talking about a charge, yes. 2 Q. You were talking about the jaw, your pain, the 3 fight, the tasing; right? 4 A. Yes. 5 Q. Now when you were doing all that were you paying 6 vigilant attention to David Smith? 7 A. I'm going to refer again to what I have said 8 prior. I didn't get out -- 9 Q. Is that a yes or a no? I don't -- 10 A. I didn't get out any medical equipment to -- I 11 thought that he was breathing. 12 Q. Well, I mean -- 13 A. The second that I thought he wasn't I rendered 14 aid. I would have done that whether it was -- 15 if it had been five seconds after the groaning. 16 Q. But you -- you didn't render aid until almost 17 five minutes after the groaning stopped, the 18 agonal breathing stopped; right? 19 A. Right. When I realized. 20 Q. In fact, you didn't even really render aid for 21 about a minute and a half after you checked his 22 pulse. 23 A. I don't know. 24 Q. Well, isn't that what it said? What does that 25 say? When do you start chest compressions?</p>

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<p>1 A. It says 8:44 here.</p> <p>2 Q. So that's about a minute after you checked his</p> <p>3 pulse; right?</p> <p>4 A. Well, you wouldn't -- you want to make sure that</p> <p>5 you're checking the pulse correctly. You don't</p> <p>6 want to give chest compressions to somebody who</p> <p>7 is -- does have a pulse. You want to -- to make</p> <p>8 sure.</p> <p>9 Q. Well, I don't recall that in my CPR, but...</p> <p>10 A. Do you -- do you think it would be beneficial to</p> <p>11 you if I started giving you chest compressions</p> <p>12 if your heart was beating?</p> <p>13 Q. Well, if you weren't sure...</p> <p>14 A. Well, you want to make sure that there --</p> <p>15 whether there is or isn't.</p> <p>16 Q. At 7:50 you take the -- you take his pulse and</p> <p>17 say at 8:00, "Gorman, Gorman. Dude, I don't</p> <p>18 think he's breathing."</p> <p>19 A. I was trying to confirm.</p> <p>20 Q. Okay. And you remember Gorman, when you -- in</p> <p>21 response at 8:27, to you saying, "I ain't got no</p> <p>22 pulse." Him saying, "Hmmm." Right?</p> <p>23 A. That's what the transcript says.</p> <p>24 Q. Do you remember hearing that on the tape, too?</p> <p>25 A. I don't know.</p>	<p>1 "Mother fucker, you better not have broke my</p> <p>2 jaw."</p> <p>3 You were still angry then, as we discussed;</p> <p>4 right?</p> <p>5 MS. FUNDINGSLAND: Objection, asked and</p> <p>6 answered.</p> <p>7 THE WITNESS: Again, it was not -- I</p> <p>8 was -- I was not angry personally at Mr. Smith.</p> <p>9 MR. BENNETT: Well, that's maybe for</p> <p>10 others to judge, but the...</p> <p>11 MS. FUNDINGSLAND: Object.</p> <p>12 BY MR. BENNETT:</p> <p>13 Q. You said it angrily, didn't you?</p> <p>14 A. I don't know. I mean you're -- you're asking</p> <p>15 for an impression of my tone of voice, I guess.</p> <p>16 Is that what you're asking?</p> <p>17 Q. Yeah.</p> <p>18 A. As I said, I was irritated that I was</p> <p>19 potentially injured.</p> <p>20 Q. And you leaned down and said it close to his</p> <p>21 ear, didn't you?</p> <p>22 A. I believe I did lean forward.</p> <p>23 Q. All right. And you didn't, at the time you did</p> <p>24 that, assess his breathing. You were very close</p> <p>25 to him. You could have done that; correct?</p>
300	302
<p>1 Q. Okay. You were concerned about your own health</p> <p>2 during that period, right, talking about can't</p> <p>3 bite down, your jaw hurts, you're in pain;</p> <p>4 right?</p> <p>5 A. I wasn't concerned that -- I mean, yeah, my jaw</p> <p>6 hurt. Yes, I was concerned.</p> <p>7 Q. Uh-huh. Would it be fair to say that prior to</p> <p>8 taking David's pulse you did nothing actively in</p> <p>9 response to his failure to respond to you? Is</p> <p>10 that true?</p> <p>11 A. Say it again.</p> <p>12 Q. Would it be fair to say prior to taking his</p> <p>13 pulse at the 7:50 mark you didn't do anything in</p> <p>14 response to him being unresponsive to you?</p> <p>15 A. I didn't actively do anything, no.</p> <p>16 Q. Okay. You were still angry, whether it's, you</p> <p>17 know, personal or not, at the 6:46 mark, when</p> <p>18 you said, "I can't bite down, mother fucker. I</p> <p>19 can't" --</p> <p>20 MS. FUNDINGSLAND: Objection --</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. -- bite down" --</p> <p>23 MS. FUNDINGSLAND: I'm sorry.</p> <p>24 BY MR. BENNETT:</p> <p>25 Q. Period.</p>	<p>1 A. I -- I don't recall if I did or... Did anything</p> <p>2 like that.</p> <p>3 Q. Did you -- well, you know now he wasn't</p> <p>4 breathing then, don't you?</p> <p>5 A. According to the medical examiner.</p> <p>6 Q. And you didn't do anything to assess his</p> <p>7 consciousness when you got right down there</p> <p>8 close to him?</p> <p>9 A. Not actively, no.</p> <p>10 Q. And you didn't do -- and by then you had not</p> <p>11 checked his pulse?</p> <p>12 A. (No response.)</p> <p>13 Q. If you had time to be angry for six minutes, or</p> <p>14 a little more than that, would you have time to</p> <p>15 follow your professional training as described</p> <p>16 by Sergeant Anderson?</p> <p>17 A. I was following training.</p> <p>18 Q. You understand --</p> <p>19 A. I requested a supervisor immediately and I</p> <p>20 requested an ambulance immediately.</p> <p>21 Q. You understand that others disagree with that?</p> <p>22 You've heard testimony about that today?</p> <p>23 A. I have heard testimony about that today.</p> <p>24 Q. If you had time to be angry for six minutes</p> <p>25 would you have time to follow --</p>

24 (Pages 299 to 302)

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<p style="text-align: right;">303</p> <p>1 A. I wasn't angry for six minutes.</p> <p>2 Q. Well, which is more important, let me ask you</p> <p>3 this--your feelings, your personal feelings of</p> <p>4 anger, or your professional duty?</p> <p>5 MS. FUNDINGSLAND: I'm going to object</p> <p>6 to the form of the question.</p> <p>7 THE WITNESS: Say that question again.</p> <p>8 BY MR. BENNETT:</p> <p>9 Q. Which is more important--your personal feelings</p> <p>10 of anger or your professional duty?</p> <p>11 A. My professional duty.</p> <p>12 Q. Which is more important--your personal feelings</p> <p>13 of anger or the duties imposed by the</p> <p>14 4th Amendment in the United States Constitution?</p> <p>15 A. The second part.</p> <p>16 Q. The 4th Amendment?</p> <p>17 A. Yes.</p> <p>18 Q. Which is more important: Your personal feelings</p> <p>19 of anger or another person's life?</p> <p>20 A. Another person's life.</p> <p>21 Q. Okay. And during -- once he's secure...</p> <p>22 I -- I mean I -- I can conceive of tactical</p> <p>23 situations where people are left in the prone</p> <p>24 position, handcuffed; for instance, if you had a</p> <p>25 high-risk warrant entry and you had a number of</p>	<p style="text-align: right;">305</p> <p>1 correct?</p> <p>2 A. Other than from Mr. Smith, the environment was</p> <p>3 safe.</p> <p>4 Q. Yeah. Well, once you got him handcuffed he's --</p> <p>5 A. Well, --</p> <p>6 Q. -- unable --</p> <p>7 He's unable to do anything with his hands,</p> <p>8 so he wouldn't be able to strike you, as he had</p> <p>9 struck you in the jaw; correct?</p> <p>10 A. He wouldn't be able to punch me with any real</p> <p>11 force, no.</p> <p>12 Q. Well, he wouldn't be able to punch you with a</p> <p>13 fist at all, really, would he?</p> <p>14 A. No. But I've been grabbed by people's hands</p> <p>15 before --</p> <p>16 Q. Okay.</p> <p>17 A. -- in certain areas.</p> <p>18 Q. Yeah. Well, I'm sorry about that and I</p> <p>19 appreciate your dealing with it...</p> <p>20 But the fact of the matter is, is that the</p> <p>21 handcuffing restricts the upper extremities and</p> <p>22 is meant to; correct?</p> <p>23 A. Restricts his -- his arms, yes.</p> <p>24 Q. Yeah. That's what I call the upper extremities.</p> <p>25 Right?</p>
<p style="text-align: right;">304</p> <p>1 people that had to be handcuffed and dealt with</p> <p>2 but there was threats throughout the structure,</p> <p>3 let's say you're doing a drug house. I mean</p> <p>4 I -- I get that. That would be one situation</p> <p>5 where you might leave somebody handcuffed in a</p> <p>6 prone position to make sure, for purposes of</p> <p>7 officers' safety, that the house was clear;</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. In this case there wasn't anybody sympathetic to</p> <p>11 David Smith? There was no crowd or riot? You</p> <p>12 know -- you know, there was no -- he had no ally</p> <p>13 there, did he?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. There was nobody that interfered with you?</p> <p>16 A. No.</p> <p>17 Q. In fact, there were witnesses that Gorman</p> <p>18 identified that would be supportive, that he</p> <p>19 wanted to make sure got -- that he got in</p> <p>20 contact with and got statements from them;</p> <p>21 right?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. So you really were in a situation that</p> <p>24 was relatively safe for officers after you have</p> <p>25 him handcuffed and in the prone restraint;</p>	<p style="text-align: right;">306</p> <p>1 A. Okay.</p> <p>2 Q. And -- and -- and then there's a situation where</p> <p>3 there's two officers on one person whose</p> <p>4 upper extremities are restrained; correct? So</p> <p>5 your ability to control him with two officers is</p> <p>6 even greater than one officer; correct?</p> <p>7 A. Yes.</p> <p>8 Q. All right. So really the paramount thing you</p> <p>9 have to deal with after you've tasered him,</p> <p>10 fought with him, got him on the ground...</p> <p>11 And you say in your transcript that he was</p> <p>12 adequately controlled by handcuffing; correct?</p> <p>13 A. His -- his hands were adequately controlled.</p> <p>14 Q. Yeah, you testified to that. But once that's</p> <p>15 done your duty is to pay attention to him, your</p> <p>16 professional duty; correct?</p> <p>17 A. In -- in the sense that we -- we need to stay</p> <p>18 with him, yes.</p> <p>19 Q. Well, you -- and you need to monitor his health</p> <p>20 vigilantly until you either turn him over to</p> <p>21 medical personnel or take him to the jail;</p> <p>22 correct?</p> <p>23 A. I don't know about the -- your use of the term</p> <p>24 "vigilantly," but we need to make sure that he's</p> <p>25 okay.</p>

25 (Pages 303 to 306)

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307	<p>1 (Sotto voce comments.)</p> <p>2 (Brian Anderson Embedded Video</p> <p>3 Page 156, Line 13 - Page 156, Line 19)</p> <p>4 "Q. So as an officer you want to remain</p> <p>5 vigilant always?</p> <p>6 "A. Try to be, yes.</p> <p>7 "Q. Okay. And you try to be vigilant with</p> <p>8 respect to monitoring the medical condition of</p> <p>9 anyone you've used force on?</p> <p>10 "A. Correct."</p> <p>11 BY MR. BENNETT:</p> <p>12 Q. You'd agree with that, wouldn't you, with</p> <p>13 Sergeant Anderson?</p> <p>14 A. I'd use some different terminology, I guess.</p> <p>15 You're using the term "vigilant" as -- in a</p> <p>16 different way, I think.</p> <p>17 Q. Than what?</p> <p>18 A. Than what he's... That's a difference of</p> <p>19 opinion.</p> <p>20 Q. Well, he didn't appear to be -- he said</p> <p>21 "Correct," with the use of the word "vigilant";</p> <p>22 correct?</p> <p>23 A. (Pausing.)</p> <p>24 Q. Right?</p> <p>25 A. Well, you could use a lot of different words</p> <p>that --</p> <p>Q. Well, we used -- the term "vigilant" was used --</p> <p>A. Well, --</p>	309	<p>1 (Jason Case Embedded Video</p> <p>2 Page 62, Line 14 - Page 63, Line 15)</p> <p>3 "Q. There... The officers exhibit no fear</p> <p>4 or danger from any other forces in the scene;</p> <p>5 correct?</p> <p>6 "A. Not that I'm aware of.</p> <p>7 "Q. I mean there's nothing about what you</p> <p>8 observed in the pen camera video, the YMCA video</p> <p>9 or the Taser video that would lead you to</p> <p>10 believe that they were concerned about other --</p> <p>11 other people or things other than -- than</p> <p>12 Mr. Smith; correct?</p> <p>13 "A. Based on what I reviewed I would say</p> <p>14 that is correct.</p> <p>15 "Q. And there -- there were people playing</p> <p>16 bas- -- don't the videos show a bunch of guys</p> <p>17 are bouncing the basketball and shooting hoops?</p> <p>18 But there's no problem with anybody, is there?</p> <p>19 "A. Yeah, I -- I guess I vaguely remember</p> <p>20 people playing basketball, but correct.</p> <p>21 "Q. But during a time period when it was</p> <p>22 critical to Mr. Smith's continuation of life</p> <p>23 they're talking about things other than his</p> <p>24 health; is that true, based on your charting?</p> <p>25 "A. Based on the charting, that is correct.</p> <p>"Q. And during a time period where it was</p> <p>critical to Mr. Smith's continuation of life</p> <p>they are not manifesting any vigilance or care</p> <p>about his physical predicament?</p> <p>"A. There's no indication on -- you know,</p> <p>on either of the videos that -- that they were."</p> <p>BY MR. BENNETT:</p> <p>Q. And you'd agree with that?</p> <p>A. No. I checked his pulse and rendered aid when I</p> <p>became aware. There -- if you're implying that</p> <p>we did nothing, I disagree with that.</p> <p>Q. Well, did you do nothing until he was</p> <p>effectively dead?</p> <p>MS. FUNDINGSLAND: Object to the form of</p>
308	<p>1 Q. -- in sworn testimony.</p> <p>2 A. -- you could use the term "monitor," as well.</p> <p>3 Q. Yeah, but in terms of how, he agreed with the</p> <p>4 use of the word "vigilant."</p> <p>5 A. Does the -- does the policy say "vigilant" or</p> <p>6 does it say "monitor"? I'm not sure.</p> <p>7 Q. I'm saying there's your training officer for the</p> <p>8 city, who the city propped up as their legal</p> <p>9 representative. Do you disagree with him or</p> <p>10 not?</p> <p>11 A. I don't disagree that that's what he said.</p> <p>12 Q. Do you disagree with the --</p> <p>13 A. I guess I --</p> <p>14 Q. -- the facts?</p> <p>15 A. I think I disagree with his terminology.</p> <p>16 Q. Okay.</p> <p>17 (Brian Anderson Embedded Video</p> <p>18 Page 110, Line 14 - Page 110, Line 17)</p> <p>19 "Q. And in terms of medical monitoring, is</p> <p>20 that a passive thing; meaning, you know, 'If I</p> <p>21 happen to notice it, I pay attention to it?'</p> <p>22 Or were the officers --</p> <p>23 MR. BENNETT: Well, we did that. Why</p> <p>24 don't we stop it?</p> <p>25</p>	310	<p>1 the question.</p> <p>2 THE WITNESS: Again, I checked his pulse</p> <p>3 when I became concerned that there -- that he</p> <p>4 was experiencing a problem.</p> <p>5 BY MR. BENNETT:</p> <p>6 Q. Would you agree that he was already effectively</p> <p>7 dead at that point?</p> <p>8 MS. FUNDINGSLAND: Same objection.</p> <p>9 THE WITNESS: No, I don't agree because</p> <p>10 he wasn't -- he was alive at the hospital.</p> <p>11 BY MR. BENNETT:</p> <p>12 Q. Was there any brain activity at the hospital?</p> <p>13 A. I don't know.</p> <p>14 Q. If there wasn't any brain activity at the</p> <p>15 hospital, and I could prove that to you, would</p> <p>16 you agree that he was effectively dead?</p> <p>17 MS. FUNDINGSLAND: Same objection.</p> <p>18 THE WITNESS: Mr. Bennett, I'm not a</p> <p>19 doctor.</p> <p>20 MR. BENNETT: I understand.</p> <p>21 THE WITNESS: He left with a pulse, to</p> <p>22 my understanding.</p> <p>23 (Sotto voce comments.)</p> <p>24 BY MR. BENNETT:</p> <p>25 Q. So you think he was resuscitated from the</p>

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311		313
1 cardiopulmonary arrest?	1 BY MR. BENNETT:	1 BY MR. BENNETT:
2 A. That's my understanding.	2 Q. Do you agree with Captain Huffman's answers to	2 Q. Do you agree with Captain Huffman's answers to
3 Q. But he -- to the best of your knowledge and	3 those questions?	3 those questions?
4 belief was he ever -- did he ever recover from	4 A. No.	4 A. No.
5 his anoxic encephalopathy; that is, the	5 Q. Okay.	5 Q. Okay.
6 deprivation of oxygen to the brain for a	6 MR. BENNETT: Let's talk about training	6 MR. BENNETT: Let's talk about training
7 prolonged period of time?	7 in that.	7 in that.
8 MS. FUNDINGSLAND: Object, foundation.	8 (Brian Anderson Embedded Video	8 (Brian Anderson Embedded Video
9 MR. BENNETT: And I'll --	9 Page 199, Line 9 - Page 199, Line 13)	9 Page 199, Line 9 - Page 199, Line 13)
10 BY MR. BENNETT:	10 "Q. Okay. Was it consistent with MPD	10 "Q. Okay. Was it consistent with MPD
11 Q. If you don't know, you don't know. I can prove	11 training prior to September 9, 2010, to kneel on	11 training prior to September 9, 2010, to kneel on
12 it.	12 a subject's back for approximately 4-1/2 minutes	12 a subject's back for approximately 4-1/2 minutes
13 A. I don't know.	13 after the subject had been adequately	13 after the subject had been adequately
14 Q. Okay. All right. I'm showing you page 39 of	14 controlled?	14 controlled?
15 your deposition. I asked you:	15 "A. No."	15 "A. No."
16 "Q. Well, was David Smith a subject who was	16 BY MR. BENNETT:	16 BY MR. BENNETT:
17 not adequately controlled by handcuffing?"	17 Q. Do you agree with that answer?	17 Q. Do you agree with that answer?
18 And you gave this answer:	18 A. No.	18 A. No.
19 "A. No. I would say that once we had him	19 (Brian Anderson Embedded Video	19 (Brian Anderson Embedded Video
20 handcuffed, we had him --	20 Page 201, Line 11 - Page 202, Line 2)	20 Page 201, Line 11 - Page 202, Line 2)
21 "Q. Adequately controlled?	21 "MR. OSBORNE: Well, he just gave you a	21 "MR. OSBORNE: Well, he just gave you a
22 "A. ... I think so."	22 hypothetical that was pretty clear, though.	22 hypothetical that was pretty clear, though.
23 Is that right?	23 If the person was cuffed and had given up	23 If the person was cuffed and had given up
24 A. I said that, yeah.	24 and was complying.	24 and was complying.
25 Q. You also told Klund that once he was hand- --	25 Right, Jeff?	25 Right, Jeff?
A. But there was more to it than just handcuffing.	26 "MR. STORMS: Yep.	26 "MR. STORMS: Yep.
	27 "MR. OSBORNE: Okay.	27 "MR. OSBORNE: Okay.
	28 "BY MR. STORMS:	28 "BY MR. STORMS:
	29 "Q. Would it be consistent with policy to	29 "Q. Would it be consistent with policy to
	30 continue kneeling on that person's back for	30 continue kneeling on that person's back for
	31 4 minutes and 30 seconds?	31 4 minutes and 30 seconds?
	32 "A. No.	32 "A. No.
	33	33
	34	34
	35	35
		</

27 (Pages 311 to 314)

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315	<p>1 That was borne out by the -- by the 2 evidence, both on the Taser camera and the 3 pen camera. 4 "A. I believe his statement here--that he 5 was not as -- resisting as hard and that he was 6 giving up and complying, yes. 7 "Q. All right. And you would agree with me 8 that -- that the need for force against an 9 individual once he was handcuffed and ceased 10 struggling with an officer is much less; 11 correct? 12 "A. Correct. 13 "Q. In fact, it's good reason to cease 14 force whatsoever? 15 "A. Could be. 16 "Q. And if they're in a prone restraint, to 17 then assess their physical condition and 18 breathing? 19 "A. Correct. 20 "Q. You're aware of the policy that says 21 that when any restraint is used... 22 "MR. STORMS: 24. 23 "MR. BENNETT: Yeah. 24 "BY MR. BENNETT: 25 "Q. 'When ANY restraint technique is used on a subject, the subject shall not be left in a prone position and shall be placed on their side as soon as they are secured.' "A. Correct. "Q. 'Once the subject is secured, an officer shall watch for the following signs: Significant change in behavior or level [of] consciousness.' "A. Yes. "Q. 'Shortness of breath or irregular breathing.' "A. Correct. "Q. 'Seizures or convulsions.' "A. Correct. "Q. 'Complaints of serious pain or injury.' "A. Correct. "Q. 'And/or any other serious medical problem.' "A. Correct." BY MR. BENNETT: Q. Do you have any disagreement with</p>
316	<p>1 Lieutenant Glampe's analysis? 2 A. I believe he would have answered differently had 3 you told him where you were reading from. You 4 didn't identify that as the maximal restraint 5 policy. 6 Q. Well, he had it in front of him. I'll guarantee 7 you that. 8 A. He didn't appear to be looking at it when you 9 were asking him the question. 10 Q. Okay. Well, nobody else, like I say, makes the 11 distinction, do they? They were all shown 12 Exhibit 24. 13 Um... So you don't agree with -- 14 A. It's interesting that you don't ever mention the 15 term "maximal restraint" to them in your 16 questioning. And that's specifically where 17 you're reading from. 18 Q. Okay. We'll see. 19 A. Or else they're not aware of the policy that you 20 say is in front of them. 21 (Brian Anderson Embedded Video 22 Page 157, Line 12 - Page 157, Line 23) 23 "Q. If MPD officers were maintaining 24 someone in a prone position, though, in terms of 25 training prior to 2010, they would have been trained that you want to overall pay attention to the medical condition of the subject? "A. Correct.</p>
317	<p>1 "Q. Because you would want to do that after 2 any use of force anyway? 3 "A. Correct. 4 "Q. And handcuffing someone and putting 5 them in a prone position is obviously a use of 6 force? 7 "A. Correct." 8 BY MR. BENNETT: 9 Q. So it doesn't make any difference to the 10 training officer whether it's in the mechanic -- 11 whether it's in the maximal restraint policy or 12 not. It's in the regular use-of-force policy. 13 Do you understand that? 14 A. I understand. 15 Q. All right. So do you disagree with 16 Sergeant Anderson in that clip? 17 A. I -- I -- I don't. I thought we were 18 monitoring his condition. 19 (Brian Anderson Embedded Video 20 Page 191, Line 22 - Page 192, Line 5) 21 "Q. You would basically expect any officer 22 working at the MPD in September of 2010, who had 23 been there for any period of time, would have 24 been trained that if they're holding someone in 25 a prone restraint position, as soon as it's practical they should be paying attention to whether or not that individual is suffering from any medical conditions? "A. Correct." BY MR. BENNETT: Q. Do you agree with that then, too? A. As soon as it is practical, yes.</p>
318	<p>1 Q. And that would have been right away because -- 2 (Unidentified video clip playing.) 3 BY MR. BENNETT: 4 Q. That would have been right away because there 5 wasn't anything else going on in the gym; right? 6 A. No. 7 Q. Why? 8 A. Because he was un- -- he had shown himself to be 9 unpredictable. 10 Q. Well, a person can give up any time; right? 11 A. And they can un-give up, as well. 12 Q. Well, sure. But let's -- let's take this case 13 that we -- we used as an example with Harteau. 14 I've got an individual that's alleged to 15 have a gun. He's running. Okay? 16 He jumps and climbs a fence. Okay? 17 And he -- but he can't get over the fence 18 and three squads show up. 19 Now he turns around and puts his hands up. 20 Can you -- can you hit him three times in the 21 face and four times with an impact weapon? 22 A. This is a case that you're currently... 23 Q. Just -- just answer me that. 24 He's given up. The person puts -- he's 25 complying. He surrenders.</p>

28 (Pages 315 to 318)

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319	<p>1 A. I -- I don't know all of the facts of it and I</p> <p>2 don't want to comment on it.</p> <p>3 Q. So you think there's possibility that he may be</p> <p>4 able to hit him in the face three times?</p> <p>5 A. I don't know.</p> <p>6 Q. Okay. Well, how would a person surrender for</p> <p>7 you? Other -- other than give you the</p> <p>8 impression, which you told Detective Klund that</p> <p>9 he was complying, he was giving up.</p> <p>10 A. At that time.</p> <p>11 Q. What more can a person do to have you lessen the</p> <p>12 force on them?</p> <p>13 MS. FUNDINGSLAND: I'm going to object</p> <p>14 to the form of the question. It's vague.</p> <p>15 MR. BENNETT: That's his own words.</p> <p>16 THE WITNESS: Well, again, I'll say that</p> <p>17 he did not give me any verbal cues, so I had no</p> <p>18 -- he wasn't telling me that he was giving up.</p> <p>19 The first time I thought he was giving up he</p> <p>20 actually didn't give up. He punched me in the</p> <p>21 face.</p> <p>22 The second time I did think he was starting</p> <p>23 to comply, but I wasn't willing to not -- to</p> <p>24 give him the benefit of the doubt again so that</p> <p>25 he could attempt to injure me again.</p>	321	<p>1 (Erick Fors Embedded Video</p> <p>2 Page 99, Line 6 - Page 99, Line 11)</p> <p>3 "BY MR. BENNETT:</p> <p>4 "Q. You've had instruction from the</p> <p>5 Minneapolis Police Department that prolonged</p> <p>6 kneeling on a subject's back during a</p> <p>7 use-of-force encounter can compromise breathing;</p> <p>8 correct?</p> <p>9 "A. Correct."</p> <p>10 BY MR. BENNETT:</p> <p>11 Q. Have you been trained the same way that</p> <p>12 Detective Fors has been trained?</p> <p>13 A. I would assume so.</p> <p>14 Q. Do you have the same -- would you answer the</p> <p>15 questions the same way as Detective Fors to the</p> <p>16 questions he was asked?</p> <p>17 A. It's easy to give a static answer on a static</p> <p>18 question. That was a fluid situation. Things</p> <p>19 could change at any moment when -- when we were</p> <p>20 at the scene.</p> <p>21 Q. Well, not after his heart stopped; right?</p> <p>22 MS. FUNDINGSLAND: Object to the form of</p> <p>23 the question and foundation.</p> <p>24 BY MR. BENNETT:</p> <p>25 Q. The fluid stopped moving through his heart.</p> <p>A. I'm not aware of when his heart stopped.</p> <p>Q. Well, it stopped before you checked his pulse,</p> <p>hadn't it?</p>
320	<p>1 BY MR. BENNETT:</p> <p>2 Q. Why -- why didn't Gorman just handcuff him when</p> <p>3 you had him under power on the Taser?</p> <p>4 A. We were trying to.</p> <p>5 Q. He -- he let go and let him stand up.</p> <p>6 A. That was before the first one.</p> <p>7 I wouldn't have tased him if we could have</p> <p>8 gotten him under control then. We couldn't get</p> <p>9 him under control.</p> <p>10 (Unidentified video clip playing.)</p> <p>11 MR. BENNETT: Stop it. Stop.</p> <p>12 (Video clip stopped.)</p> <p>13 MR. BENNETT: All right.</p> <p>14 (Erick Fors Embedded Video</p> <p>15 Page 98, Line 7 - Page 98, Line 25)</p> <p>16 "Q. And, you know, you would -- you</p> <p>17 believe, if as Gorman admits, he was on --</p> <p>18 applying pressure with one or both knees, or</p> <p>19 alternatively applying pressure with the left or</p> <p>20 right knee for a period of 4-1/2 minutes, you</p> <p>21 would expect him to pay attention for those</p> <p>22 4-1/2 minutes, don't you?</p> <p>23 "A. Yes.</p> <p>24 "Q. And the attention is to be directed to</p> <p>25 the person you're using the force on?</p> <p>"A. Correct.</p> <p>"Q. And the reason you do that is that you</p> <p>don't want someone to die by mistake while</p> <p>you're holding onto them, do you?</p> <p>"A. I think you could -- you could</p> <p>encompass it into a wider range. You don't want</p> <p>the person to suffer any medical problems.</p> <p>"Q. That's right.</p> <p>"A. (Nodding.)</p>	322	<p>1 MS. FUNDINGSLAND: Object, form of the</p> <p>2 question.</p> <p>3 THE WITNESS: I did not get a pulse.</p> <p>4 (Brian Anderson Embedded Video</p> <p>5 Page 193, Line 19 - Page 194, Line 5)</p> <p>6 "Q. Okay. Prior to September 9, 2010 were</p> <p>7 MPD officers trained that it's appropriate</p> <p>8 to place a subject in prone position and</p> <p>9 kneel on the subject's back for several</p> <p>10 minutes without monitoring the subject's</p> <p>11 level of consciousness?</p> <p>12 "A. No.</p> <p>13 "Q. Okay. Prior to September 9, 2010 were</p> <p>14 MPD officers trained that it was appropriate to</p> <p>15 place a subject in the prone position and kneel</p> <p>16 on the subject's back for several minutes</p> <p>17 without monitoring the subject's breathing?</p> <p>18 "A. No."</p> <p>19 BY MR. BENNETT:</p> <p>20 Q. You'd agree with those answers?</p> <p>21 A. It's not -- it's not a specific training thing.</p> <p>22 I don't recall any training that says that it's</p> <p>23 prohibited --</p> <p>24 Q. Well, you -- you --</p> <p>25 A. -- ever.</p> <p>Q. You were trained to put people in the recovery</p> <p>or side position, weren't you?</p> <p>A. If using a maximal restraint.</p> <p>Q. That's the only situation?</p> <p>A. That's the only one that I'm aware of in the</p> <p>manual.</p>

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323	<p>1 Q. All right. How about this? Well, okay.</p> <p>2 A. Recovery position.</p> <p>3 (Brian Anderson Embedded Video Page 125, Line 22 - Page 126, Line 7)</p> <p>4</p> <p>5 "Q. And what I'm saying is based upon the training that you've received and training 6 that's been provided by the MPD, is that the ideal medical position, in terms of facilitating breathing, is to put someone in a side or seated 7 position rather than a prone position? "A. Correct.</p> <p>8 "Q. And that's training that has been provided to MPD officers I think since like the 9 mid '90s; right? "A. Correct."</p> <p>10 BY MR. BENNETT:</p> <p>11 Q. You retrieved... You received that training 12 for -- in a number of circumstances, not just 13 the maximal restraint?</p> <p>14 A. The?</p> <p>15 Q. Training.</p> <p>16 A. No.</p> <p>17 Q. Not policy.</p> <p>18 No?</p> <p>19 A. That is -- that is in reference to "What is the 20 approved recovery position?" And that is 21 putting someone on their side or sitting them 22 up, but it's not in -- it's in response to using 23 a maximal restraint. That is the recovery 24 position. I don't dispute that.</p> <p>25</p>	325
324	<p>1 Q. All right. All right.</p> <p>2 (Brian Anderson Embedded Video Page 189, Line 5 - Page 189, Line 14)</p> <p>3</p> <p>4 "Q. So if you had a suspect who was complying and was under control, the training 5 that you provided would have been at that point you want to get that person in a side position or a seated position? "A. Correct.</p> <p>6 "Q. Okay. Would you expect that all MP -- all MPD officers prior to 2010 would have 7 received training to that effect? "A. Correct."</p> <p>8 BY MR. BENNETT:</p> <p>9 Q. Would you agree that that's the training you 10 received, that Sergeant Anderson indicated?</p> <p>11 A. I had reason to believe that David Smith 12 would -- would continue to act out, so he was 13 not placed in a different position.</p> <p>14 Q. Well, what did he do after he stopped moaning?</p> <p>15 A. Just -- there was -- once we had him handcuffed, 16 yeah, he wasn't acting out, but I didn't trust 17 that he wouldn't in --</p> <p>18 Q. Well, --</p> <p>19 A. -- the future.</p> <p>20 Q. -- how would he ever give up under your 21 scenario?</p> <p>22 A. We were -- we were just holding -- getting -- 23 holding control of his body. We weren't --</p> <p>24 Q. You were suffocating him.</p> <p>25</p>	326

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327	<p>1 (Adam Grobove Embedded Video Page 22, Line 22 - Page 23, Line 23)</p> <p>2</p> <p>3 "Q. Now, it appears that -- I mean, you understand that the department has trained that when any restraint technique is used on a 4 subject, the subject shall not be left in a prone position and shall be placed on their side 5 in a position of recovery as soon as they are secured. Is that training that you've done and 6 received?</p> <p>7 "MS. FUSSY: Objection, foundation. "You can answer, if you know. "A. Yes, we have discussed that and we 8 taught that in training. "BY MR. BENNETT: "Q. And that's been trained that -- 9 "A. Talked about it. "Q. -- way for a long time, hasn't it? 10 "A. I don't know when they started that, sir. I can't give you an exact date clarifying 11 it was long. "Q. But you expect everybody from patrol 12 officers to the chief to know that, don't you? "MS. FUSSY: Objection, speculation 13 and foundation. "A. That depends. Sometimes -- I would say 14 that it would have to depend on each person. "BY MR. BENNETT: "Q. Well, they're all trained that way, 15 right? "MS. FUSSY: Objection, foundation. 16 "A. Yes, they would be trained that way." 17 BY MR. BENNETT: 18 Q. So do you disagree with Officer Grobove? 19 A. If you can show me somewhere in our manual, 20 force field, where it says recovery position 21 other than the maximal restraint, then I will -- 22 then I'll agree. 23 Q. We're talking about training. 24 A. Right. 25</p>	329	<p>1 (Amelia Huffman Embedded Video Page 76, Line 4 - Page 76, Line 25)</p> <p>2</p> <p>3 "Q. Now you talk about not being a doctor in terms of understanding the length of time, you know, there was kneeling on David Smith's 4 back. "Minneapolis police officers, along with all 5 other police officers, have been trained for a long period of time that you're not supposed to 6 continue to kneel on the backs of subjects for a long period of time; isn't that right? 7 "A. Yes. We train officers to turn them over into the recovery position as soon as 8 practical. "Q. And that was long before this case, 9 wasn't it, that that training has been provided? "A. Yes. I don't know for how long and in 10 -- and in what context, but certainly it's been part of our maximal restraint policy for many 11 years. "Q. And it's something that you would -- 12 that you train to do not only in maximal restraint, but in any situation where you have a 13 handcuffed individual in the prone position; isn't that right? 14 "A. Yes. We encourage officers to turn them over as soon as practical onto their side." 15 BY MR. BENNETT: 16 Q. It seems like Captain Huffman doesn't make the 17 distinction that you're trying to make. 18 A. She answered that a little bit differently than 19 the others did before. She said, "As soon as 20 practical." 21 Q. Do you disagree with her? 22 A. I don't disagree that you could put somebody 23 into a different position when -- if it's 24 practical. 25</p>
328	<p>1 Q. Training is not the manual, is it?</p> <p>2 A. We get training --</p> <p>3 Q. You get training separate from the --</p> <p>4 A. No. We get training based -- based on the 5 manual.</p> <p>6 Q. These are the trainers we're asking; right? We 7 asked the trainers. That's what they say they 8 train.</p> <p>9 A. Right. And I say --</p> <p>10 Q. And you disagree with that?</p> <p>11 A. And I think you didn't give them the full 12 question.</p> <p>13 Q. You think... No. And -- and then do you think 14 the city attorney didn't coach them? Do you 15 think the city attorney didn't tell them there's 16 this maximal restraint policy? Now --</p> <p>17 MS. FUNDINGSLAND: Object to the form of 18 the question.</p> <p>19 BY MR. BENNETT: 20 Q. I mean do you really think that?</p> <p>21 A. I don't know.</p> <p>22 MR. BENNETT: That's a lot of people to 23 hoodwink.</p> <p>24 MS. FUNDINGSLAND: Object. 25</p>	330	<p>1 Q. Well, when -- why wouldn't it be practical?</p> <p>2 A. I did not know if David Smith was done.</p> <p>3 Q. So what? He complied. He gave up. Why do you 4 kneel on someone after he gave up and not 5 monitor him?</p> <p>6 A. As --</p> <p>7 MS. FUNDINGSLAND: Objection, compound 8 question.</p> <p>9 THE WITNESS: As I said before, I 10 thought he gave up once before, too, and he 11 didn't. So it was not practical --</p> <p>12 BY MR. BENNETT: 13 Q. Well, then you used force on him again.</p> <p>14 MS. FUNDINGSLAND: Objection, allow him 15 to finish his answer, please.</p> <p>16 BY MR. BENNETT: 17 Q. I thought you had. If you've got more answer, 18 give it.</p> <p>19 A. Well, you can ask another question. I don't 20 remember where I was going with that.</p> <p>21 Q. Well, I'll -- I'll -- I'll reprise it for you. 22 You -- you know, you thought he gave up once 23 before --</p> <p>24 A. Correct.</p> <p>25 Q. -- and so in response to that you tased him four</p>

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331	<p>1 more times, handcuffed him and put him in the</p> <p>2 prone position.</p> <p>3 A. Well, in -- in response to him punching me I --</p> <p>4 Q. Okay.</p> <p>5 A. -- felt it was necessary to tase him again.</p> <p>6 Q. Absolutely. I've got no problem with that.</p> <p>7 But then, when you think he gives up</p> <p>8 again...</p> <p>9 Once you think he gives up, you've got to</p> <p>10 stop; right?</p> <p>11 A. I did stop after the first time.</p> <p>12 Q. I know. And have to stop -- if he gives up</p> <p>13 again...</p> <p>14 The idea was to use force to make him give</p> <p>15 up; correct?</p> <p>16 A. Yep. Yes.</p> <p>17 Q. All right. And -- and it didn't work the first</p> <p>18 time. I get what you're saying.</p> <p>19 But then when you conclude and tell the</p> <p>20 detectives that he gave up once he was</p> <p>21 handcuffed, then a different response is</p> <p>22 engendered after that. You can't use force</p> <p>23 prophylactically, can you?</p> <p>24 A. I don't know what you mean by that.</p> <p>25 Q. Well, you -- you use force in response to the</p>	333	<p>1 need to be darn sure that you're paying</p> <p>2 attention to their breathing?</p> <p>3 A. That's correct.</p> <p>4 Q. And to do otherwise would be</p> <p>5 unreasonable?</p> <p>6 A. Well, again, there are circumstantial</p> <p>7 factors involved in any of those situations,</p> <p>8 which it's -- it's hard to say that...</p> <p>9 "For example, if you were taking fire or</p> <p>10 something then I think it would be reasonable to</p> <p>11 get out of the way --</p> <p>12 Q. Sure.</p> <p>13 A. -- or drag the person and -- and so</p> <p>14 forth.</p> <p>15 Q. I -- I get that.</p> <p>16 A. So circumstances vary.</p> <p>17 Q. But to do so when there's no other</p> <p>18 subject to control and when the subject you are</p> <p>19 -- that you are handcuffing has complied and has</p> <p>20 given up, there's certainly -- it would be</p> <p>21 unreasonable to not pay attention to their</p> <p>22 breathing if you continued to keep them in the</p> <p>23 prone restraint position?</p> <p>24 A. Um... Correct.</p> <p>25 Q. You realize that Gorman and Callahan</p> <p>weren't taking fire?</p> <p>A. Yes."</p> <p>BY MR. BENNETT:</p> <p>Q. Do you have any disagreement with Deputy Chief</p> <p>Allen's answers to those questions?</p> <p>A. Again, Mr. Smith was left in the position he was</p> <p>because I was not confident that he would not</p> <p>continue to resist.</p> <p>Q. Well, do you agree or not? I'll let you...</p> <p>I mean do you agree with his analysis or</p> <p>not? That if you're going to keep him there</p> <p>you've got to --</p> <p>A. I don't disagree.</p>
332	<p>1 activities of the person you're arresting.</p> <p>2 A. When somebody gives up we don't untie and</p> <p>3 handcuff them, as well.</p> <p>4 Q. No. You want to keep them adequately</p> <p>5 controlled, don't you?</p> <p>6 A. And that's what I -- and in my opinion that is</p> <p>7 what we were doing.</p> <p>8 Q. Okay. That's -- that's what... Okay.</p> <p>9 (Robert Allen Embedded Video</p> <p>10 Page 102, Line 25 - Page 105, Line 3)</p> <p>11 "Q. Deputy Chief, do you have any</p> <p>12 disagreement with Captain Amelia Huffman's</p> <p>13 answers to any of those questions?</p> <p>14 "A. To the last question... You know, we</p> <p>15 wouldn't always turn a handcuffed prisoner onto</p> <p>16 their side. We may have them in a sitting</p> <p>17 position, for example, in the back of a police</p> <p>18 car.</p> <p>19 "Q. But that -- that in itself is a</p> <p>20 different kind of recovery position?</p> <p>21 "A. Correct.</p> <p>22 "Q. You don't leave them in a prone</p> <p>23 restraint handcuffed position?</p> <p>24 "A. Well, we may, but not without moni- --</p> <p>25 I mean there are tactical situations, for</p> <p>example, during a search warrant in which you'd</p> <p>place somebody in a prone position for a short</p> <p>period of time and so forth.</p> <p>"Q. But while you do that you have to be</p> <p>especially mindful of breathing; --</p> <p>"A. Correct.</p> <p>"Q. -- correct?</p> <p>"So there's a correlation between the -- a</p> <p>decision to tactically leave someone in a prone</p> <p>restraint position and the need to monitor the</p> <p>breathing?</p> <p>"A. Correct.</p> <p>"Q. If you make a tactical decision to --</p> <p>that a person needs to be kept in a prone</p> <p>restraint position while they're handcuffed, you</p>	334	<p>1 Q. Okay.</p> <p>2 A. And if -- and if -- if the situation had been</p> <p>3 different we would have stood him up and walked</p> <p>4 him out.</p> <p>5 Q. Why didn't you just roll him over when he</p> <p>6 complied and was giving up?</p> <p>7 MS. FUNDINGSLAND: Object to the form of</p> <p>8 the question.</p> <p>9 BY MR. BENNETT:</p> <p>10 Q. I mean how many times do you have to give up?</p> <p>11 MS. FUNDINGSLAND: Objection, compound</p> <p>12 question.</p> <p>13 THE WITNESS: Rolling him over allows</p> <p>14 him much more leverage with his legs as far as</p> <p>15 kicking.</p> <p>16 BY MR. BENNETT:</p> <p>17 Q. Couldn't you just sit on his legs and roll him</p> <p>18 over?</p> <p>19 A. That allows him more access with -- to move</p> <p>20 around with his head, to possibly bite, spit,</p> <p>21 what -- a number of different things.</p> <p>22 Q. He never spit at you? He never bite -- he never</p> <p>23 bit you, did he?</p> <p>24 A. He -- he didn't punch me prior to punching me</p> <p>25 either, but then he did.</p>

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<p style="text-align: right;">335</p> <p>1 Q. Well, you don't get to kill him for biting you</p> <p>2 either, do you?</p> <p>3 A. I -- our intent was not to do anything --</p> <p>4 Q. Well, that's --</p> <p>5 A. -- any harm to him.</p> <p>6 Q. All right. You are aware of and have been</p> <p>7 trained regarding the risks relating to pressure</p> <p>8 on a subject's chest wall; correct?</p> <p>9 A. Can you say it?</p> <p>10 Q. If you put pressure on a subject's chest wall,</p> <p>11 you're aware of the dangers of that; correct?</p> <p>12 A. I'm aware of -- that's why we have a maximal</p> <p>13 restraint policy.</p> <p>14 Q. Kneeling on a subject's back would put pressure</p> <p>15 on a subject's chest wall; correct?</p> <p>16 A. I don't -- I don't know that it would be</p> <p>17 necessarily incapacitating because --</p> <p>18 (Sotto voce comments.)</p> <p>19 (Richard Zimmerman Embedded Video</p> <p>20 Page 64, Line 4 - Page 64, Line 8)</p> <p>21 "Q. Did it surprise you that the cause of</p> <p>22 death was mechanical asphyxia?"</p> <p>23 "A. No.</p> <p>24 "Q. And why didn't that surprise you?"</p> <p>25 "A. Because they had knelt on him to</p> <p>handcuff him."</p> <p>BY MR. BENNETT:</p> <p>Q. That's Lieutenant Zimmerman, the head of</p>	<p style="text-align: right;">337</p> <p>1 MR. BENNETT: I've got quite a bit more.</p> <p>2 MS. FUNDINGSLAND: Well, don't forget</p> <p>3 you've already got about 3-1/2 hours in from the</p> <p>4 first one.</p> <p>5 MR. BENNETT: Well, I think it's more</p> <p>6 like two forty-five.</p> <p>7 MS. FUNDINGSLAND: No, I counted it.</p> <p>8 Gorman's was shorter.</p> <p>9 MR. BENNETT: Well, we're off the record</p> <p>10 now.</p> <p>11 VIDEOGRAPHER: Off the video record at</p> <p>12 12:05 P.M.</p> <p>13 (Recess: 12:05 P.M. to 12:54 P.M.)</p> <p>14 VIDEOGRAPHER: This Disc 3.</p> <p>15 We are on the record at 12:55 P.M.</p> <p>16 BY MR. BENNETT:</p> <p>17 Q. Would it be correct to state that each patrol</p> <p>18 officer has received sufficient emergency</p> <p>19 medical training to be able to work among the</p> <p>20 public in such a way as that they should have</p> <p>21 the capacity to assess whether a person is</p> <p>22 breathing?</p> <p>23 A. Again, it's -- it's a very -- as far as I know</p> <p>24 it's just CPR training now, but --</p> <p>25 Q. But --</p>
<p style="text-align: right;">336</p> <p>1 Homicide?</p> <p>2 A. That is.</p> <p>3 Q. So this doesn't -- apparently this wasn't a new</p> <p>4 concept to the lieutenant--if you kneel on them</p> <p>5 to handcuff them you could kill them?</p> <p>6 A. Every person that I have handcuffed, that I</p> <p>7 handcuffed on the ground, I've knelt on them,</p> <p>8 most likely.</p> <p>9 Q. Okay.</p> <p>10 A. I can't say exactly every single person.</p> <p>11 (Sotto voce comments.)</p> <p>12 BY MR. BENNETT:</p> <p>13 Q. So are you saying you can kneel on a subject's</p> <p>14 back until they mechanically asphyxiate just in</p> <p>15 case --</p> <p>16 MS. FUNDINGSLAND: Object to the form of</p> <p>17 the question.</p> <p>18 BY MR. BENNETT:</p> <p>19 Q. -- he might get up?</p> <p>20 A. No, I'm not saying that.</p> <p>21 Q. Okay. I just wanted to be clear.</p> <p>22 MR. BENNETT: Why don't we break for</p> <p>23 lunch.</p> <p>24 MS. FUNDINGSLAND: How long do you</p> <p>25 intend to go?</p>	<p style="text-align: right;">338</p> <p>1 A. -- yes, you can tell if somebody is breathing.</p> <p>2 Q. And the capacity to tell if someone is conscious</p> <p>3 or alive?</p> <p>4 A. I -- I don't know that we're specifically</p> <p>5 trained on vitals.</p> <p>6 Q. How about consciousness?</p> <p>7 A. Maybe -- maybe we have been. I'm not -- I don't</p> <p>8 know.</p> <p>9 Q. Okay. All right. Well, um...</p> <p>10 A. As far as training goes.</p> <p>11 MR. BENNETT: Off the record.</p> <p>12 VIDEOGRAPHER: Off the video record at</p> <p>13 12:56 P.M.</p> <p>14 (Off the record.)</p> <p>15 MR. BENNETT: Let's go back on the</p> <p>16 record, please.</p> <p>17 VIDEOGRAPHER: We are back on the video</p> <p>18 record at 12:56 P.M.</p> <p>19 BY MR. BENNETT:</p> <p>20 Q. Why did you buy the pen camera?</p> <p>21 A. Just to have. I thought it could be helpful in</p> <p>22 some scenarios/situations.</p> <p>23 Q. Did you buy it for work purposes?</p> <p>24 A. Yes. I never used it outside of work.</p> <p>25 Q. So you only used the pen camera that's the</p>

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<p style="text-align: right;">339</p> <p>1 subject of the -- the facts in this case in work</p> <p>2 conditions?</p> <p>3 A. To my recollection I've only used it at work,</p> <p>4 yes.</p> <p>5 Q. And that was as a patrol officer for the city of</p> <p>6 Minneapolis?</p> <p>7 A. Correct.</p> <p>8 Q. Did you use it in any off-duty jobs?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Prior to September 9, 2010 did you ever request</p> <p>11 permission or authority to use the pen camera on</p> <p>12 duty as a Minneapolis police patrol officer?</p> <p>13 A. Not that I recall.</p> <p>14 Q. Who was your direct supervisor on that date?</p> <p>15 A. On that date?</p> <p>16 Q. On that day.</p> <p>17 A. I don't remember who it was.</p> <p>18 Q. Who was your lieutenant?</p> <p>19 A. (No audible response.)</p> <p>20 Q. And who would you have asked if you were going</p> <p>21 to ask permission?</p> <p>22 A. It didn't occur to me to ask.</p> <p>23 Q. Okay. Prior to September 9, 2010 did you ever</p> <p>24 advise any supervisor that you were using the</p> <p>25 pen camera on duty as a Minneapolis police</p>	<p style="text-align: right;">341</p> <p>1 September 9th, while on duty as a Minneapolis</p> <p>2 patrol officer, to capture images of you and</p> <p>3 others in the performance of your police</p> <p>4 activities for the Minneapolis Police</p> <p>5 Department?</p> <p>6 A. Yes.</p> <p>7 Q. How many times?</p> <p>8 A. I don't know.</p> <p>9 Q. Well, more than 20?</p> <p>10 A. Probably, yes.</p> <p>11 Q. More than 30?</p> <p>12 A. Probably.</p> <p>13 Q. Less than 50?</p> <p>14 A. I don't know. I... It could be a hundred.</p> <p>15 Q. Okay.</p> <p>16 A. I don't know.</p> <p>17 Q. And if I understand your prior answer, the</p> <p>18 answer to this question is no, but you made no</p> <p>19 personal use of the pen camera while not on duty</p> <p>20 as a Minneapolis police patrol officer?</p> <p>21 A. I don't believe so.</p> <p>22 Q. All right. As of September 10, 2010 did the</p> <p>23 video files of the other incidents that you had</p> <p>24 captured on -- by the use of that digital video</p> <p>25 recorder/pen camera remain on the pen camera?</p>
<p style="text-align: right;">340</p> <p>1 patrol officer?</p> <p>2 A. I -- I don't recall if it ever came up or if I</p> <p>3 ever... I mean people knew that I had it. I</p> <p>4 don't know if I ever told a supervisor. It may</p> <p>5 have come up in passing, but I didn't</p> <p>6 specifically say anything.</p> <p>7 Q. Who knew that you had it?</p> <p>8 A. I don't know. I mean I --</p> <p>9 Q. You're --</p> <p>10 A. It wasn't --</p> <p>11 Q. -- the one that just said that.</p> <p>12 A. I -- I understand that. But what I'm trying to</p> <p>13 tell you is it wasn't a secret. I don't know</p> <p>14 who may have -- I may have mentioned it to while</p> <p>15 having coffee or something.</p> <p>16 Q. But you didn't -- you neither sought nor</p> <p>17 obtained permission from any Minneapolis Police</p> <p>18 Command & Control person to use it; correct?</p> <p>19 A. No, I didn't.</p> <p>20 Q. Okay.</p> <p>21 A. To my knowledge I don't think I did.</p> <p>22 Q. Have you ever used a pen camera or other spy</p> <p>23 camera device after -- after September 9, 2010?</p> <p>24 A. No.</p> <p>25 Q. Did you use the pen camera prior to</p>	<p style="text-align: right;">342</p> <p>1 A. Anything prior to 2010?</p> <p>2 Q. No.</p> <p>3 A. Or...</p> <p>4 Q. Before the day after this incident did all of</p> <p>5 the video files remain on the pen camera itself?</p> <p>6 A. No.</p> <p>7 Q. Had you deleted some before?</p> <p>8 A. Yes.</p> <p>9 Q. How many -- were there pen camera videos that</p> <p>10 were un-deleted on the pen camera as of</p> <p>11 September 9, 2010?</p> <p>12 A. There may have been one or two. It has a very</p> <p>13 limited memory capacity. If you don't remove</p> <p>14 them it's useless.</p> <p>15 Q. Did you ever put them anywhere?</p> <p>16 A. On my computer, I suppose, is where I put them.</p> <p>17 Q. All right. Did you ever make zip files of any</p> <p>18 of the other...</p> <p>19 A. No, not that I -- not that I recall.</p> <p>20 Q. Did you ever e-mail any of those other images to</p> <p>21 anyone else?</p> <p>22 A. No.</p> <p>23 Q. You e-mailed -- you made a zip file of the video</p> <p>24 of this incident?</p> <p>25 A. I... When you say "zip file" do you mean a</p>

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<p style="text-align: right;">343</p> <p>1 flash drive?</p> <p>2 Q. No. A... I guess I should...</p> <p>3 What I understood is you made a file -- an</p> <p>4 e-mail attachment of it; correct?</p> <p>5 A. Not to my knowledge. I may have tried it --</p> <p>6 maybe I tried to do that, to send to my attorney</p> <p>7 or something. I don't know.</p> <p>8 Q. Did you make e-mail attachments of other videos?</p> <p>9 A. Not to my knowledge.</p> <p>10 MR. BENNETT: Mark this. What are we</p> <p>11 on?</p> <p>12 (Discussion held off the record.)</p> <p>13 (Exhibit 115 marked.)</p> <p>14 BY MR. BENNETT:</p> <p>15 Q. Showing you Exhibit 115, that was prepared by an</p> <p>16 expert retained by the city, showing that on</p> <p>17 September 10, 2001 [sic] at 15:32:58 you created</p> <p>18 a video file on your computer and compressed to</p> <p>19 a zip file. Do you see that?</p> <p>20 A. I see it.</p> <p>21 Q. And made it an Outlook Express e-mail</p> <p>22 attachment?</p> <p>23 A. I see it.</p> <p>24 Q. Do you deny doing that?</p> <p>25 A. I don't deny doing it. I don't know what I -- I</p>	<p style="text-align: right;">345</p> <p>1 other spy camera?</p> <p>2 A. No.</p> <p>3 (Exhibit 116 marked.)</p> <p>4 BY MR. BENNETT:</p> <p>5 Q. This was -- this was given to me by the</p> <p>6 city attorney's office. Indicated that -- the</p> <p>7 pen camera videos archived on your personal</p> <p>8 computer. Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Have you looked at these?</p> <p>11 A. I don't know. I'm sure that I've seen them at</p> <p>12 some point.</p> <p>13 Q. Well, have you looked at --</p> <p>14 A. Not recently.</p> <p>15 Q. -- them since they were --</p> <p>16 A. No.</p> <p>17 Q. -- captured --</p> <p>18 A. I haven't looked at them recently.</p> <p>19 Q. One -- we're only going to have to speak one at</p> <p>20 a time.</p> <p>21 A. Okay.</p> <p>22 Q. If you let me finish my question... We've both</p> <p>23 done it, but it just messes up the record.</p> <p>24 Okay?</p> <p>25 A. Okay.</p>
<p style="text-align: right;">344</p> <p>1 don't know what it's for.</p> <p>2 Q. Did you copy that video file to -- from the</p> <p>3 pen camera to your home computer at 21:51:11?</p> <p>4 A. It looks like it, yeah.</p> <p>5 Q. Okay.</p> <p>6 A. That's the only way to view it, as -- as I</p> <p>7 recall.</p> <p>8 Q. And you did that onto your personal computer?</p> <p>9 A. Yes.</p> <p>10 Q. The one upstairs?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have another computer?</p> <p>13 A. I have an old laptop. If I can find it. I</p> <p>14 don't know if I still have it or if I've gotten</p> <p>15 rid of it, but I have --</p> <p>16 Q. Did you search for it?</p> <p>17 A. Ah... I haven't -- I looked around. I didn't</p> <p>18 look where -- the last place it could be.</p> <p>19 Q. I don't understand.</p> <p>20 A. There's one place that I could continue to look</p> <p>21 that I might be able to find it. I don't use</p> <p>22 it. I haven't used it in a long time, but --</p> <p>23 Q. Have you ever used it with the pen camera?</p> <p>24 A. No.</p> <p>25 Q. Did you ever have, prior to this pen camera, any</p>	<p style="text-align: right;">346</p> <p>1 Q. Do you remember... Do you remember any of these</p> <p>2 specific files?</p> <p>3 A. No.</p> <p>4 Q. Did -- did you -- the earliest one is June 26,</p> <p>5 2010. Did you use the pen camera before that?</p> <p>6 A. I don't know.</p> <p>7 Q. The last one is 9/4/2010. Did you use the</p> <p>8 pen camera between that and 2010 -- September --</p> <p>9 A. It was --</p> <p>10 Q. -- September 9, 2010?</p> <p>11 A. Say it again.</p> <p>12 Q. Well, the last one on Exhibit 116 is -- was last</p> <p>13 written 9/4/2010, 11:35. Do you see that?</p> <p>14 A. Are you asking me if that's the last time it was</p> <p>15 used prior to this incident?</p> <p>16 Q. Yes.</p> <p>17 A. I don't know. If that's what it says. I have</p> <p>18 no idea what dates I used it. I don't dispute</p> <p>19 it.</p> <p>20 Q. Okay. I've looked at those videos.</p> <p>21 Did you typically start your computer -- or</p> <p>22 excuse me.</p> <p>23 Did you typically start the digital video</p> <p>24 recorder, your pen camera, at the time you were</p> <p>25 still in your squad car about to take the call?</p>

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<p style="text-align: right;">347</p> <p>1 A. Sometimes.</p> <p>2 Q. Well, I've never... I've looked at all those</p> <p>3 files. Have you ever done it any other way</p> <p>4 other than the -- the incident involved with</p> <p>5 David Smith?</p> <p>6 A. I'm sure that I have.</p> <p>7 Q. So you've activated it mid call before?</p> <p>8 A. Yes, I'm sure I have.</p> <p>9 Q. Other than the David Smith one?</p> <p>10 A. I would say probably. I mean I -- I can't give</p> <p>11 you a definitive which one, where, when.</p> <p>12 I'm saying that sometimes calls change--it</p> <p>13 goes from being a nothing call to something that</p> <p>14 maybe you might want to have a recording of and</p> <p>15 then you would start it.</p> <p>16 Q. Did you ever... Do you remember the naked-man</p> <p>17 videos?</p> <p>18 A. Videos?</p> <p>19 Q. I think there's two.</p> <p>20 A. I -- I remember --</p> <p>21 Q. There's two files.</p> <p>22 A. I remember there's an incident concerning a</p> <p>23 naked man.</p> <p>24 Q. Did you e-mail those to any other officers?</p> <p>25 A. No.</p>	<p style="text-align: right;">349</p> <p>1 identified.</p> <p>2 MR. BENNETT: Yeah.</p> <p>3 VIDEOGRAPHER: Off the video record at</p> <p>4 1:08 P.M.</p> <p>5 (Discussion held off the record.)</p> <p>6 VIDEOGRAPHER: We are back on the video</p> <p>7 record at 1:08 P.M.</p> <p>8 (8/21/10 Pen Camera Video Playing.)</p> <p>9 MR. BENNETT: It's the video taken on</p> <p>10 August 21, 2010 at 19:42 hours.</p> <p>11 Is that right, Officer?</p> <p>12 THE WITNESS: That's what it says on the</p> <p>13 screen, yes.</p> <p>14 MR. BENNETT: Off.</p> <p>15 VIDEOGRAPHER: Off the video record at</p> <p>16 1:09 P.M.</p> <p>17 MR. BENNETT: I may I have enough to ask</p> <p>18 you the questions I need you to ask.</p> <p>19 (8/21/10 Pen Camera Video Stopped.)</p> <p>20 BY MR. BENNETT:</p> <p>21 Q. Do you have that video in mind? I mean do you</p> <p>22 know basically what's on that or do you want to</p> <p>23 watch it?</p> <p>24 A. No, I have it in mind.</p> <p>25 Q. Do you think you can answer questions about it?</p>
<p style="text-align: right;">348</p> <p>1 Q. Okay. Did you ever use the pen camera to</p> <p>2 belittle or demean anyone?</p> <p>3 A. Not to my knowledge.</p> <p>4 Q. Well, do you think the -- the naked-man video</p> <p>5 was belittling and demeaning in the way you took</p> <p>6 the -- took the video?</p> <p>7 A. No. No more so than him being in public naked</p> <p>8 and for all the world to see.</p> <p>9 Q. Okay. Well, the world wouldn't have seen it if</p> <p>10 you... You know, you're the one who recorded it</p> <p>11 digitally; correct?</p> <p>12 A. It may have been on the squad camera. I'm not</p> <p>13 sure.</p> <p>14 Q. Well, don't you remember your -- sticking your</p> <p>15 hand out the side of the squad and taking the</p> <p>16 video with the pen?</p> <p>17 A. I don't know. Maybe I did.</p> <p>18 Q. Did you... Okay.</p> <p>19 MR. BENNETT: Why don't we play that.</p> <p>20 Do you want to play it on the record or off</p> <p>21 the record, Lynne? I don't -- we can just as</p> <p>22 easily watch it off the record.</p> <p>23 MS. FUNDINGSLAND: That's fine.</p> <p>24 MR. BENNETT: Off the record.</p> <p>25 MS. FUNDINGSLAND: As long as we get it</p>	<p style="text-align: right;">350</p> <p>1 I don't want to be unfair you. You seem to</p> <p>2 think we --</p> <p>3 A. I mean I'll do my best. I -- if you ask me if I</p> <p>4 said a specific word I might need to have</p> <p>5 clarification, but I remember the video.</p> <p>6 Q. Okay.</p> <p>7 MR. BENNETT: All right. Let's go back</p> <p>8 on.</p> <p>9 VIDEOGRAPHER: We are back on the video</p> <p>10 record. It is approximately 1:10 P.M.</p> <p>11 BY MR. BENNETT:</p> <p>12 Q. What we were looking at here is a video from the</p> <p>13 pen camera; correct?</p> <p>14 A. Yes.</p> <p>15 Q. Not a squad video?</p> <p>16 A. No.</p> <p>17 Q. A squad video would be oriented towards the</p> <p>18 front of the squad; correct?</p> <p>19 A. Yes. The camera can be turned.</p> <p>20 Q. Okay. But it wasn't? This is your pen --</p> <p>21 A. I don't -- I don't think I did.</p> <p>22 Q. In this one you can actually see yourself in the</p> <p>23 side-view mirror holding the pen camera out</p> <p>24 taking the image; correct?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">351</p> <p>1 Q. Okay. Did you do that a lot?</p> <p>2 A. No.</p> <p>3 Q. Typically would you wear the pen camera in the</p> <p>4 pen --</p> <p>5 A. Yes.</p> <p>6 Q. -- section of your left breast Minneapolis</p> <p>7 City of the Lakes' duty blouse?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And it stayed there during the rough and</p> <p>10 tumble struggle with David Smith; correct?</p> <p>11 A. As far as I know it didn't come out, yes.</p> <p>12 Q. It didn't come out? It captured the video that</p> <p>13 was shown. And as far as you know it stayed in</p> <p>14 that position from the point it started until</p> <p>15 the point it ended?</p> <p>16 A. Exactly where it was, I don't know.</p> <p>17 Q. Well, in -- it stayed put in --</p> <p>18 A. It was in the pocket --</p> <p>19 Q. Yeah.</p> <p>20 A. -- as far as I know.</p> <p>21 Q. And the clip kept it in -- into the pocket;</p> <p>22 correct?</p> <p>23 A. No, the clip is not -- the clip is more for show</p> <p>24 than... It's not -- it's not very much tension</p> <p>25 on it. The pen can slide up and down no</p>	<p style="text-align: right;">353</p> <p>1 A. Where?</p> <p>2 Q. On top.</p> <p>3 A. Oh, there. Ah, yes, it says that.</p> <p>4 Q. And 3.201 says, "Authorized equipment and</p> <p>5 weapons" and it's been in place since 2007;</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And it says, "While working sworn MPD employees</p> <p>9 shall..."</p> <p>10 And that's you; right?</p> <p>11 A. Yes.</p> <p>12 Q. "...shall only carry and use equipment and</p> <p>13 weapons that have been authorized by the MPD</p> <p>14 Training Unit and only the weapons that the</p> <p>15 employees have been trained to use by the MPD</p> <p>16 Training Unit or its designee"; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And "The MPD Training Unit shall be responsible</p> <p>19 for conducting research and product testing of</p> <p>20 any new equipment or weapons prior to</p> <p>21 authorization for carry and use by sworn MPD</p> <p>22 employees"; right?</p> <p>23 A. Where did you read that from?</p> <p>24 Q. The second paragraph.</p> <p>25 A. Okay.</p>
<p style="text-align: right;">352</p> <p>1 problem.</p> <p>2 Q. Uh-huh. Well, if the clips on it can't slide...</p> <p>3 The clip is shown in Exhibit 50, isn't it,</p> <p>4 on top of your -- and it keeps it secure?</p> <p>5 A. Well, it keeps it from going like this one does,</p> <p>6 from going down in the pocket, if that's what</p> <p>7 you're asking. It doesn't keep it necessarily</p> <p>8 in the pocket.</p> <p>9 Q. Correct. But it kept it secured -- it stayed in</p> <p>10 the pocket throughout your struggle?</p> <p>11 A. As far as I know, yes.</p> <p>12 Q. Yeah.</p> <p>13 A. I didn't have to pick it up off the ground, that</p> <p>14 I recall.</p> <p>15 Q. All right. And it operated throughout the</p> <p>16 struggle, as at least is indicated by the video</p> <p>17 itself; correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Now Exhibit 113 is the work rules</p> <p>20 and benefits... Ah...</p> <p>21 (Sotto voce comments.)</p> <p>22 BY MR. BENNETT:</p> <p>23 Q. And that governs personal equipment; correct?</p> <p>24 A. Personal equipment or department equipment?</p> <p>25 Q. It says "Personal Equipment."</p>	<p style="text-align: right;">354</p> <p>1 Q. Is that -- that's what it says?</p> <p>2 A. Yes, that's what it says.</p> <p>3 Q. Did you ever take the pen camera to the MPD</p> <p>4 Training Unit?</p> <p>5 A. No.</p> <p>6 Q. Was the pen camera ever authorized by the MPD</p> <p>7 Training Unit?</p> <p>8 A. I didn't take it to them so I don't know.</p> <p>9 Q. Well, have you ever been advised that it is?</p> <p>10 A. No.</p> <p>11 Q. I mean they -- they list all sorts of things</p> <p>12 that are approved and which models you can use</p> <p>13 of approved equipment; correct?</p> <p>14 A. Yes.</p> <p>15 Q. I mean they tell you what you have to have and</p> <p>16 then they tell you what you can't have.</p> <p>17 A. Well, it doesn't say the name brand of stuff.</p> <p>18 Q. Well, it sure does.</p> <p>19 A. No, it doesn't. It says, "Chemical agent." It</p> <p>20 doesn't say what kind we use.</p> <p>21 Q. Well, for your flashlight you can use a</p> <p>22 Streamlight Model 3, Model 3X or TRL 1.</p> <p>23 A. Where are you? I don't --</p> <p>24 Q. That's page 4. I mean they -- they do list</p> <p>25 specific brand names for things like flashlights</p>

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355	<p>1 and flashlight attachments; --</p> <p>2 A. Yes.</p> <p>3 Q. -- right?</p> <p>4 Weapons?</p> <p>5 A. Where's the weapons part?</p> <p>6 Q. Well, you can carry either a Smith & Wesson</p> <p>7 J Frame 5-shot revolver if -- for your secondary</p> <p>8 handgun. Or Colt D Frame 6-shot revolver or</p> <p>9 Ruger 5-shot revolver; right?</p> <p>10 A. Uh-huh.</p> <p>11 Q. Is that -- is that a "Yes"?</p> <p>12 A. Yes.</p> <p>13 Q. And you can carry the kind --</p> <p>14 A. It doesn't say -- it doesn't say specifically</p> <p>15 for everything, though.</p> <p>16 Q. Well, no.</p> <p>17 A. For that particular section it does.</p> <p>18 Q. But there -- there are a number of things that</p> <p>19 it lists specifically; right?</p> <p>20 A. Yeah.</p> <p>21 Q. And it lists all sorts of equipment, none of</p> <p>22 which include a spy camera or pen camera of any</p> <p>23 type; correct?</p> <p>24 A. Correct. I also don't see my sunglasses, or my</p> <p>25 wallet, or my personal keys or what kind of</p>	357	<p>1 the pen camera; correct?</p> <p>2 A. If necessary, yes.</p> <p>3 Q. Well, you -- you did in this naked-man video.</p> <p>4 A. That man wasn't charged with a crime. It's not</p> <p>5 evidence.</p> <p>6 Q. Well, you know, it's... Isn't it a crime --</p> <p>7 A. He was taken to APS, as I recall.</p> <p>8 Q. Okay. It's at least potentially criminal to</p> <p>9 walk downtown naked, I would think.</p> <p>10 A. If he knew what he was doing. I don't think he</p> <p>11 knew what he was doing.</p> <p>12 Q. I --</p> <p>13 A. That was my assessment at the time.</p> <p>14 Q. Sure. But it is -- you are actually capturing</p> <p>15 evidence of a crime?</p> <p>16 A. It -- it could have been.</p> <p>17 Q. Yeah. And -- and you captured evidence of a</p> <p>18 crime that is Assault 4, at least in your view</p> <p>19 and Gorman's view, of David Smith.</p> <p>20 A. I -- as I said, I don't know that we were going</p> <p>21 to charge him. Officer Gorman suggested and I</p> <p>22 didn't necessarily disagree with it.</p> <p>23 But it was my opinion that if he was</p> <p>24 charged, it would have been charged at a later</p> <p>25 date because he would have -- would have gone to</p>
356	<p>1 socks I can wear.</p> <p>2 Q. Okay. Well, --</p> <p>3 A. It doesn't show a lot of stuff --</p> <p>4 Q. But you're not --</p> <p>5 A. -- that I carry every day.</p> <p>6 Q. Are your socks evidence? Are your keys</p> <p>7 evidence?</p> <p>8 A. I -- not in this scenario, no.</p> <p>9 Q. Okay. If you're taking a picture of the</p> <p>10 naked man is that evidence?</p> <p>11 A. It could have been.</p> <p>12 Q. If you're -- you -- you -- you used this</p> <p>13 pen camera for the very purpose of capturing</p> <p>14 video images of your police work and the people</p> <p>15 you encounter therein; correct?</p> <p>16 A. Yeah. And for situations just like this, where</p> <p>17 I'm -- potentially I could get sued for</p> <p>18 using force or using -- for doing anything.</p> <p>19 Q. Well, you're being sued for using force that</p> <p>20 killed somebody in this case, but the...</p> <p>21 MS. FUNDINGSLAND: Excuse me, counsel.</p> <p>22 MR. BENNETT: Well, I...</p> <p>23 His answer was no less responsive.</p> <p>24 BY MR. BENNETT:</p> <p>25 Q. You -- but the idea is to create evidence with</p>	358	<p>1 the hospital first, --</p> <p>2 Q. Well, --</p> <p>3 A. -- to APS.</p> <p>4 Q. But you talked about what to charge him with?</p> <p>5 That is a police --</p> <p>6 A. That would have been what we would have charged</p> <p>7 him with, yes.</p> <p>8 Q. And that is a police function?</p> <p>9 A. Yes.</p> <p>10 Q. And what you captured was police evidence of</p> <p>11 either a felony, or a gross misdemeanor, or a</p> <p>12 critical incident?</p> <p>13 A. Something that evolved into a critical incident,</p> <p>14 yes.</p> <p>15 Q. Well... But it was a critical incident? I mean</p> <p>16 it --</p> <p>17 A. Right. But it didn't start out that way. I</p> <p>18 didn't -- I didn't start the camera because I</p> <p>19 thought it was going to be a critical incident.</p> <p>20 Q. But if it -- but if it catches video of a</p> <p>21 shooting or of -- of -- in this case a</p> <p>22 mechanical asphyxiation, it obviously is</p> <p>23 evidence, isn't it?</p> <p>24 MS. FUNDINGSLAND: Object to the form of</p> <p>25 the question.</p>

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<p style="text-align: right;">359</p> <p>1 THE WITNESS: It would -- it would be a</p> <p>2 part of --</p> <p>3 MR. BENNETT: Sure.</p> <p>4 THE WITNESS: Probably.</p> <p>5 BY MR. BENNETT:</p> <p>6 Q. Was it your practice to take videos from your</p> <p>7 pen camera and download them on your own</p> <p>8 computer?</p> <p>9 A. Yes.</p> <p>10 Q. You never take -- you never download any of the</p> <p>11 images to the Minneapolis Police Department?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay. Have you ever arrested anyone that you</p> <p>14 filmed with a pen camera?</p> <p>15 A. I'm -- I'm sure.</p> <p>16 Q. So you know you would have created evidence</p> <p>17 there; right?</p> <p>18 A. Not -- no. I don't know that.</p> <p>19 Q. Did you ever film an actual incident underlying</p> <p>20 the crime itself then?</p> <p>21 A. I don't -- I don't -- I don't think so. I</p> <p>22 don't... We rarely get there when the crime is</p> <p>23 in -- in process -- in progress. We generally</p> <p>24 get there afterwards.</p> <p>25 Q. Okay. Well, you -- you had evidence of this</p>	<p style="text-align: right;">361</p> <p>1 A. I don't believe I've ever e-mailed any of them</p> <p>2 to anyone.</p> <p>3 Q. All right. Your supplement shows that you</p> <p>4 turned the pen camera in on October 15, 2010; is</p> <p>5 that right?</p> <p>6 A. I believe so.</p> <p>7 Q. Did you learn that day that you had to turn the</p> <p>8 pen camera in? Or did you learn it before that?</p> <p>9 A. I volunteered to turn it in.</p> <p>10 Q. Did someone tell you to turn it in?</p> <p>11 A. No. Wait. The actual pen camera or the footage</p> <p>12 of the pen camera?</p> <p>13 Q. The pen camera.</p> <p>14 A. I volunteered -- the actual camera itself, the</p> <p>15 hardware, --</p> <p>16 Q. Yeah.</p> <p>17 A. -- not the footage from it?</p> <p>18 Q. Yeah.</p> <p>19 A. Okay. What date?</p> <p>20 Q. October 15, 2010.</p> <p>21 A. As I believe, I brought it up and asked would --</p> <p>22 "Would you like this to go into evidence?" And</p> <p>23 whoever it was that I was talking to said,</p> <p>24 "Yeah, why don't you put it into evidence."</p> <p>25 Q. Your attorney didn't tell you to do that?</p>
<p style="text-align: right;">360</p> <p>1 supposed Assault 4 on the video; correct?</p> <p>2 A. I assumed that I did.</p> <p>3 Q. Okay. Well, you said you "...got it all here";</p> <p>4 right?</p> <p>5 A. Yeah, but I don't know that it was -- that it</p> <p>6 captured it.</p> <p>7 Q. Well, you turned out to be correct.</p> <p>8 A. I turned out to be -- that was correct, yes.</p> <p>9 Q. Once you downloaded the videos onto your home</p> <p>10 computer what did you do with them?</p> <p>11 A. I didn't -- what do you mean what -- I didn't do</p> <p>12 anything with them.</p> <p>13 Q. You never e-mailed them to anyone in the</p> <p>14 department?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Ever e-mailed them to family or friends?</p> <p>17 A. I don't believe so.</p> <p>18 Q. You're not sure?</p> <p>19 A. I -- I don't know how to do it. If it shows me</p> <p>20 in this one attempting to do it, then I</p> <p>21 attempted to do it and it didn't work.</p> <p>22 And I would have sent it probably to Fred</p> <p>23 Bruno.</p> <p>24 Q. Did you send the naked-man one to Fred Bruno,</p> <p>25 too?</p>	<p style="text-align: right;">362</p> <p>1 A. No, I didn't --</p> <p>2 MS. FUNDINGSLAND: Can you be more</p> <p>3 specific?</p> <p>4 BY MR. BENNETT:</p> <p>5 Q. Well, were you advised to turn it in by an</p> <p>6 attorney?</p> <p>7 A. Are you referring to Fred Bruno or the city's</p> <p>8 attorneys?</p> <p>9 Q. I'm not -- I'm just -- there's -- I'm just -- an</p> <p>10 attorney.</p> <p>11 A. Not the pen camera, no.</p> <p>12 Q. Okay.</p> <p>13 A. Well, no, I -- I asked if it should go into</p> <p>14 evidence and somebody, and I don't know who,</p> <p>15 said, "Yeah, why don't you put it in evidence."</p> <p>16 I had already turned in the footage.</p> <p>17 Q. Okay.</p> <p>18 (Sotto voce comments.)</p> <p>19 (Exhibit 117 marked.)</p> <p>20 BY MR. BENNETT:</p> <p>21 Q. Exhibit 117, page 1, --</p> <p>22 MS. FUNDINGSLAND: They're both page 1,</p> <p>23 Mr. Bennett.</p> <p>24 MR. BENNETT: Okay. Exhibit 1 [sic]</p> <p>25 ES 0- -- 01.</p>

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<p style="text-align: right;">363</p> <p>1 MS. FUNDINGSLAND: That's both of them. 2 MR. BENNETT: Yeah. 3 BY MR. BENNETT: 4 Q. Smith -- "Smith Pen Camera: Active Files and 5 Folders" list, lists one AVI file; correct? 6 A. Is this the page that you're -- 7 Q. Yep. 8 A. I see one AVI file. 9 Q. The second page lists a number of AVI files; 10 correct? 11 A. Yes. 12 Q. And they're -- they exceed the number on 13 Exhibit 116; correct? 14 A. I don't have 116. 15 Q. One -- 16 A. No. 17 Say it again. 18 Q. The AVI files are different from and different 19 in number -- in fact, there are only two AVI 20 files that appear on 116 that appear on 117. 21 A. I don't know. Okay. 22 Q. Did you... And then it shows a bunch of lex 23 files. Accessed 10/5/2010. Do you see that? 24 A. I see that it says "lex." 25 Q. Did you delete all of those files? Does that</p>	<p style="text-align: right;">365</p> <p>1 Q. Did you delete a number of files? 2 A. I don't know. I don't know if I did. 3 Q. You don't know? 4 A. I might have. 5 Q. Do you have a recollection of deleting files in 6 early October before you gave the pen camera to 7 the Property Department? 8 A. I don't know. I -- if I -- maybe I did. I'm 9 saying that I don't remember doing it. Could I 10 have done it? I could have. 11 Q. Did anyone tell you to? 12 A. No. 13 Q. When you turned the pen camera into the 14 Property Room on 10/15 was it your intention to 15 have every other video file deleted from that at 16 that time? 17 A. From the actual pen cam itself? 18 Q. Yes. 19 A. I think I had removed the other files that were 20 not pertinent to the reason I was property 21 inventorying it. Is that what you're asking? 22 Q. Yes. 23 A. I think I did that. 24 Q. Did you remove it by deleting it? 25 A. I don't know. That I don't know.</p>
<p style="text-align: right;">364</p> <p>1 show a recordation of the deletion of those 2 files? 3 A. I don't know what "lex" means. 4 Q. Well, did you de- -- well, let me ask you this: 5 Did you delete AVI files that are reflected with 6 the lex and the AVI numbers on 10/5/2010? 7 A. I don't know. 8 Q. Do you remember deleting a number of files from 9 the pen camera on that -- on 10/5/2010? 10 A. Ah... I may have taken stuff off and deleted 11 it. I don't know. I don't know what this -- 12 these -- this means. 13 Q. Well -- 14 A. You're telling me if it... 15 Are you telling me that "lex" means 16 "deleted"? 17 Q. I will -- I'm going to -- that's what I believe 18 we have... 19 (Sotto voce comments.) 20 BY MR. BENNETT: 21 Q. You see there's a number of AVI files that are 22 last accessed on 10/5/2010. Do you see that? 23 A. I -- I see what you're referring to, but what 24 I'm saying is I don't know what this stuff 25 means.</p>	<p style="text-align: right;">366</p> <p>1 Q. How did you remove it? 2 A. You just take them off the -- when the screen 3 comes up you just remove it -- remove it from 4 the pen cam itself. 5 Q. Why did you erase those images after you learned 6 you were going to property inventory it? 7 A. I didn't -- 8 MS. FUNDINGSLAND: Object to form of the 9 question. He has not stated that. 10 BY MR. BENNETT: 11 Q. Why did you remove the images -- 12 A. I turned in what I thought -- 13 Q. -- before you turned it in to Inventory? 14 A. I turned in the footage that was relevant to the 15 date of the reason I was turning it in, this 16 incident. 17 Obviously you have other footage. They're 18 not deleted. They're just taken off the 19 pen camera. 20 Q. Well, I don't think that's actually true. I 21 think they were -- those were obtained from your 22 hard drive. If you look at -- 23 A. Which is where these would have went. If you're 24 saying I removed them from the pen cam they 25 would have went --</p>

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<p style="text-align: right;">367</p> <p>1 Q. I -- I don't know. Did you remove them --</p> <p>2 A. I've deleted lots of files because if it turns</p> <p>3 on, or if turns on inadvertently... If it turns</p> <p>4 on -- if I turn it on and it's a nothing</p> <p>5 situation, I'll delete lots of stuff.</p> <p>6 Q. So you only turn it on and keep it if it's</p> <p>7 something you want to keep?</p> <p>8 A. No. There -- there might be files that I didn't</p> <p>9 ever get around to cleaning -- or taking off of</p> <p>10 my hard drive or... But they just need to be</p> <p>11 removed from the pen cam otherwise the pen cam</p> <p>12 storage fills up.</p> <p>13 Q. Have you removed files from your hard drive, as</p> <p>14 well?</p> <p>15 A. I don't -- whatever is on my hard drive is what</p> <p>16 was taken from the pen cam and put there. I</p> <p>17 don't believe I've deleted any of them.</p> <p>18 Q. Have you tried to?</p> <p>19 A. Not -- no. Whatever is there I didn't try to</p> <p>20 delete. The ones that were deleted, that were a</p> <p>21 couple of seconds long or something, they might</p> <p>22 have been. I don't recall.</p> <p>23 Q. Have you ever turned in a video of your police</p> <p>24 work to the Minneapolis Police Department prior</p> <p>25 to the David Smith incident?</p>	<p style="text-align: right;">369</p> <p>1 home computer and the time he gave his</p> <p>2 statement?</p> <p>3 A. I... I don't know. I -- I know specifically we</p> <p>4 talked about... Because we have to go and see a</p> <p>5 department-authorized... I guess a psychiatrist</p> <p>6 after a critical incident.</p> <p>7 I know we spoke about -- because I didn't --</p> <p>8 I don't think I had all the names that he had of</p> <p>9 people -- of options that we could do. And I</p> <p>10 think he gave me a number for one of them.</p> <p>11 The rest of the stuff, I don't know. It was</p> <p>12 just general.</p> <p>13 Q. Well, other calls you made were to Susan K.</p> <p>14 Powers Olson. Is she the --</p> <p>15 A. That's the person I went and saw.</p> <p>16 Q. Okay. Who is Bob Jacobson?</p> <p>17 A. My -- one of my sergeants, --</p> <p>18 Q. Okay.</p> <p>19 A. -- I believe. That's... Unless there's a</p> <p>20 different Bob Jacobson, but I have a sergeant</p> <p>21 named Bob Jacobson.</p> <p>22 Q. Okay. What's his phone number?</p> <p>23 A. I don't know.</p> <p>24 Q. Can you look it up on your phone?</p> <p>25 A. I did not bring my phone today.</p>
<p style="text-align: right;">368</p> <p>1 A. I don't believe so.</p> <p>2 Q. Okay. Did you and Gorman text each other, text</p> <p>3 message each other after the incident?</p> <p>4 A. I don't know. I doubt it. I'm not a big</p> <p>5 texter.</p> <p>6 Q. Did you often text him?</p> <p>7 A. No.</p> <p>8 Q. How did you communicate with Gorman?</p> <p>9 A. At work. There may have been an instance where</p> <p>10 we talked on the phone, but for the most part</p> <p>11 we -- whatever communicating we did, we did at</p> <p>12 work.</p> <p>13 Q. Well, the records reflect that you and Gorman</p> <p>14 spoke seven times between September 9, 2010 and</p> <p>15 September 16, 2010, totaling 130 minutes.</p> <p>16 A. Okay.</p> <p>17 Q. Ah --</p> <p>18 A. You didn't ask me if... Well, go ahead.</p> <p>19 Q. Is that -- would that be generally correct to</p> <p>20 the best of your knowledge?</p> <p>21 A. Is that from my cell phone bill?</p> <p>22 Q. Yep.</p> <p>23 A. It's probably correct then.</p> <p>24 Q. What did you speak about in those days between</p> <p>25 the time you downloaded the incident onto your</p>	<p style="text-align: right;">370</p> <p>1 Q. Well, if I read his number could you -- would</p> <p>2 you know it?</p> <p>3 A. No.</p> <p>4 Q. Okay.</p> <p>5 A. I know very few numbers. With cell phones...</p> <p>6 But I can tell you that I made a lot of --</p> <p>7 we were supposed to make these calls to get to</p> <p>8 somebody to talk to. And I made a lot of calls</p> <p>9 that people were not around. They didn't</p> <p>10 respond.</p> <p>11 It was -- this was a Thursday, wasn't it?</p> <p>12 (Sotto voce comments.)</p> <p>13 THE WITNESS: I think it was a Thursday.</p> <p>14 MS. FUNDINGSLAND: I think so.</p> <p>15 MR. BENNETT: I believe that's right,</p> <p>16 yeah.</p> <p>17 THE WITNESS: And either people were out</p> <p>18 of town, or they didn't get back to me before</p> <p>19 the weekend. But there was a lot of numbers</p> <p>20 that I called, that if I looked even at my</p> <p>21 transcript -- or my cell phone bill, I</p> <p>22 wouldn't -- I don't who they are.</p> <p>23 If I called them I would find -- you know,</p> <p>24 then I would find out it was some psy... I'm</p> <p>25 not using the right word. Um...</p>

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371	<p>1 BY MR. BENNETT:</p> <p>2 Q. Well, you --</p> <p>3 A. Therapist or something. Whoever was --</p> <p>4 Q. -- you had several lengthy phone calls with</p> <p>5 Gorman, though; right?</p> <p>6 A. I don't know how long they were.</p> <p>7 Q. Thirty-three. Thirty-two. Thirty-one.</p> <p>8 Twenty-three.</p> <p>9 A. Okay.</p> <p>10 Q. What do you remember talking to Gorman about?</p> <p>11 A. Again, I don't remember specifically what it</p> <p>12 was, but I would assume that... Whether he</p> <p>13 called me or I called him it was along the lines</p> <p>14 of, "How are you doing? Are you okay?" It...</p> <p>15 Q. Did you talk about the video camera, the video?</p> <p>16 A. I don't know if we did specifically.</p> <p>17 Q. You had looked at it how many times by 8:15 --</p> <p>18 by 8:11 in the morning the next day?</p> <p>19 A. Once I think. Maybe twice. I don't know.</p> <p>20 Q. How often do you typically use your personal</p> <p>21 e-mail account?</p> <p>22 A. Almost never.</p> <p>23 Q. Have you ever e-mailed Gorman from your personal</p> <p>24 e-mail account?</p> <p>25 A. Not that I recall. I can almost say probably I</p>	373	<p>1 BY MR. BENNETT:</p> <p>2 Q. This is a transcript of a voicemail we got from</p> <p>3 -- that Jeff Storms got from Burt Osborne.</p> <p>4 You know who Burt Osborne is, don't you?</p> <p>5 A. Yes.</p> <p>6 Q. It said... There on the bottom it says, "Also,</p> <p>7 let Bob and Katie know that Callahan doesn't</p> <p>8 have the computer anymore. The thing was</p> <p>9 somewhat old, I think, and he got rid of it over</p> <p>10 a year ago, he told us yesterday."</p> <p>11 Did you tell him you got rid of the computer</p> <p>12 over a year ago?</p> <p>13 A. Well, apparently we had a miscommunication over</p> <p>14 the --</p> <p>15 Q. Can you just answer? Either you did or you</p> <p>16 didn't? Yes or no?</p> <p>17 A. No, I can't answer it yes or no because I don't</p> <p>18 remember what I said. I think I was asked to</p> <p>19 voluntarily turn it over and I think I was not</p> <p>20 wanting to do that. I don't know if I said,</p> <p>21 "I got rid of it over a year ago."</p> <p>22 I called him the next day and said, "You can</p> <p>23 have access to it."</p> <p>24 I was under -- I didn't know if it was</p> <p>25 voluntary or if it was under the subpoena from</p>
372	<p>1 have not because I don't use it. I use my work</p> <p>2 one.</p> <p>3 Q. You -- you made this Outlook Express attachment,</p> <p>4 e-mail attachment from -- of the pen camera.</p> <p>5 You know what Outlook Express is, don't you?</p> <p>6 A. E-mail, I think.</p> <p>7 Q. All right. Why did you make an e-mail</p> <p>8 attachment?</p> <p>9 A. Again, I think it was probably to get to Fred</p> <p>10 Bruno since he wasn't in town. As I was advised</p> <p>11 to let Bruno decide what to do with it since it</p> <p>12 was a critical incident.</p> <p>13 Q. Do you recall being asked to get the computer</p> <p>14 that you downloaded the video on?</p> <p>15 A. That day?</p> <p>16 Q. No. At some time in the last couple years.</p> <p>17 A. Yes, I had a -- I've had a discussion with the</p> <p>18 city attorney.</p> <p>19 Q. And you knew that you downloaded it on your</p> <p>20 computer upstairs?</p> <p>21 A. Yes.</p> <p>22 Q. And watched it up there with your wife?</p> <p>23 A. Yes.</p> <p>24 MR. BENNETT: Would you mark that?</p> <p>25 (Exhibit 118 marked.)</p>	374	<p>1 the judge -- from a judge.</p> <p>2 Q. All I'm asking --</p> <p>3 A. We obviously mis-communicated. I don't recall</p> <p>4 exactly what I said to him.</p> <p>5 Q. Is there any reason to believe that Burt got</p> <p>6 that wrong?</p> <p>7 A. I don't -- perhaps. And maybe I got it wrong.</p> <p>8 Maybe I said it wrong to him.</p> <p>9 Q. Well, what I want to know --</p> <p>10 A. That computer has been out of commission.</p> <p>11 Q. Yes or no? Did you tell him that -- that you</p> <p>12 got rid of it over a year ago?</p> <p>13 A. I don't recall if I said those words, those</p> <p>14 exact words.</p> <p>15 Q. Would you deny it?</p> <p>16 A. Do I deny it?</p> <p>17 Q. Yeah.</p> <p>18 A. I'm suggesting to you that this was a</p> <p>19 miscommunication. And I don't remember what the</p> <p>20 exact conversation was.</p> <p>21 But --</p> <p>22 Q. Would --</p> <p>23 A. -- I provided the computer to you.</p> <p>24 Q. Would you deny that you told him this?</p> <p>25 A. I would deny that I used that particular</p>

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<p style="text-align: right;">375</p> <p>1 language. I don't know. But maybe I did. I</p> <p>2 don't know.</p> <p>3 Q. So you really don't have any reason or</p> <p>4 foundation to deny it if you don't know;</p> <p>5 correct?</p> <p>6 A. Well, I -- I assume that you're trying to paint</p> <p>7 me as a liar, but I turned over the computer.</p> <p>8 You had access to it, so --</p> <p>9 Q. I just want to know if you told --</p> <p>10 A. I mis-communicated with Burt Osborne somehow to</p> <p>11 give him the -- that impression. I didn't know</p> <p>12 that --</p> <p>13 Q. You weren't going to give us the computer</p> <p>14 originally, were you? You didn't want to?</p> <p>15 A. I wasn't -- I didn't know if it was a voluntary</p> <p>16 thing or if it was something that was ordered by</p> <p>17 a subpoena, by the judge.</p> <p>18 Q. You didn't want to give us the computer, did</p> <p>19 you?</p> <p>20 A. I was -- I didn't really feel that you needed to</p> <p>21 dig through my personal life in that manner. I</p> <p>22 turned over the footage, --</p> <p>23 Q. Well, --</p> <p>24 A. -- which has been established that it's -- it's</p> <p>25 all there, --</p>	<p style="text-align: right;">377</p> <p>1 Q. And as you understand it, that's what we asked</p> <p>2 for; right?</p> <p>3 A. I -- I don't -- you asked for my computer, --</p> <p>4 Q. Well, --</p> <p>5 A. -- in which to look through my entire personal</p> <p>6 hard drive.</p> <p>7 Q. Well, we wanted to process it the same way that</p> <p>8 this would be, this processing by the</p> <p>9 department; correct?</p> <p>10 A. I don't know.</p> <p>11 Q. You don't know? Okay.</p> <p>12 A. I don't know what you're going to do with it.</p> <p>13 Q. All right. Do you know Grobove very well?</p> <p>14 A. I know who he is. I -- I'm friendly with him.</p> <p>15 I wouldn't classify us as friends.</p> <p>16 Q. Okay. You know he did a supplement. You've</p> <p>17 seen the supplement, haven't you?</p> <p>18 A. No. I don't know.</p> <p>19 Q. Okay.</p> <p>20 (Sotto voce comments.)</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. Is there any reason that you believe that we</p> <p>23 should not get to look at all the videos that</p> <p>24 you've taken while performing police work?</p> <p>25 A. Ah, that -- that... I have no opinion on that.</p>
<p style="text-align: right;">376</p> <p>1 Q. You're the one that --</p> <p>2 A. -- I think.</p> <p>3 Q. -- made the computer, your computer relevant;</p> <p>4 you understand that?</p> <p>5 A. How did I do that?</p> <p>6 Q. By downloading the pen camera on it.</p> <p>7 A. Yeah, that particular footage, but not going</p> <p>8 through -- digging through my personal</p> <p>9 hard drive.</p> <p>10 Q. Well, you -- have you got the -- have you got</p> <p>11 the -- the new -- what do they call it?</p> <p>12 Administrative...</p> <p>13 MS. FUNDINGSLAND: Announcement.</p> <p>14 MR. BENNETT: Oh.</p> <p>15 BY MR. BENNETT:</p> <p>16 Q. That if you...</p> <p>17 Today what would happen with your pen camera</p> <p>18 and your computer?</p> <p>19 A. I'm aware that there's a new policy.</p> <p>20 Q. And they take everything, wouldn't they?</p> <p>21 A. It looks like it, yeah.</p> <p>22 Q. And they process your call history, your text</p> <p>23 messages, your contact lists, all images, all</p> <p>24 video, all audio and deleted data files; right?</p> <p>25 A. That's the way I understand it.</p>	<p style="text-align: right;">378</p> <p>1 I don't know what the --</p> <p>2 Q. Well, they weren't personal. They were police</p> <p>3 -- they were taken for the purposes of police</p> <p>4 duties with equipment you carried into the field</p> <p>5 on that day.</p> <p>6 A. I have no opinion on it.</p> <p>7 Q. Well, would you object to it?</p> <p>8 MS. FUNDINGSLAND: Object to the form of</p> <p>9 the question.</p> <p>10 (Sotto voce comments.)</p> <p>11 BY MR. BENNETT:</p> <p>12 Q. Would you --</p> <p>13 MS. FUNDINGSLAND: I'm going to instruct</p> <p>14 him not to answer that question.</p> <p>15 MR. BENNETT: Why?</p> <p>16 MS. FUNDINGSLAND: Because we do the</p> <p>17 objecting on behalf of our clients, not him.</p> <p>18 MR. BENNETT: Well, --</p> <p>19 MS. FUNDINGSLAND: Unless you want to</p> <p>20 rephrase the question.</p> <p>21 BY MR. BENNETT:</p> <p>22 Q. You took the -- the digital video recorder into</p> <p>23 -- on duty with you for the purpose of capturing</p> <p>24 on-duty experiences and events; correct?</p> <p>25 A. Yes.</p>

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379	<p>1 Q. Okay. And you had no expectations that -- that</p> <p>2 those recordations would be kept private, did</p> <p>3 you?</p> <p>4 MS. FUNDINGSLAND: I'm sorry, but the</p> <p>5 what would be kept private?</p> <p>6 MR. BENNETT: Any of those recordings</p> <p>7 because they were on-duty events and</p> <p>8 experiences.</p> <p>9 THE WITNESS: They would be private</p> <p>10 unless I introduced them for evidence.</p> <p>11 BY MR. BENNETT:</p> <p>12 Q. Well, why do you get to decide that? If</p> <p>13 you're... Aren't we entitled to know, as</p> <p>14 citizens, what you do as an officer, especially</p> <p>15 if you take that piece of equipment into the</p> <p>16 field?</p> <p>17 A. You could come on a ride-along and see what we</p> <p>18 do as officers. You can get squad video and all</p> <p>19 other kinds of video. That was -- that was a</p> <p>20 personal recorder.</p> <p>21 Q. Is there anything on the pen camera videos that</p> <p>22 is embarrassing or you wouldn't want us to see?</p> <p>23 A. Not that I'm aware of.</p> <p>24 Q. Okay. Okay. Grobove's supplement indicates</p> <p>25 that when he came into Room 100 that you and</p>	381	<p>1 BY MR. BENNETT:</p> <p>2 Q. Would you agree that that's a true statement?</p> <p>3 MS. FUNDINGSLAND: Well, I'm going to</p> <p>4 object to the form of the question as -- on</p> <p>5 foundation as to --</p> <p>6 MR. BENNETT: Let me -- let me ask --</p> <p>7 MS. FUNDINGSLAND: Okay.</p> <p>8 BY MR. BENNETT:</p> <p>9 Q. Did you see Grobove come in?</p> <p>10 A. He's the -- I believe he's the one who came in</p> <p>11 and took custody of the Taser.</p> <p>12 Q. Yeah. He comes right to you and --</p> <p>13 A. But I was -- I don't... I'll be honest, I don't</p> <p>14 recall seeing Lieutenant -- or Captain Huffman</p> <p>15 that night.</p> <p>16 Q. Okay. But that's okay. You...</p> <p>17 A. I don't deny that she was there if she says she</p> <p>18 was there. I don't recall seeing her.</p> <p>19 Q. Well, and he says she was there.</p> <p>20 A. Okay. I don't -- I don't recall seeing her.</p> <p>21 Q. Okay. But you recall Grobove coming and -- and</p> <p>22 taking custody of your Taser?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Delmonico is there and he has no other</p> <p>25 police purpose there? He's not a lieutenant in</p>
380	<p>1 Gorman were there; is that correct?</p> <p>2 A. I believe so.</p> <p>3 Q. He also says that Lieutenant Glampe,</p> <p>4 Captain Huffman and Lieutenant Delmonico and</p> <p>5 Crime Lab personnel were there. Is that</p> <p>6 correct?</p> <p>7 A. I don't recall exactly who was in the room.</p> <p>8 Q. You recall Lieutenant Delmonico, don't you?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So Grobove's testimony...</p> <p>11 (Adam Grobove Embedded Video</p> <p>12 Page 44, Line 16 - Page 45, Line 11)</p> <p>13 "Q. Okay. And when I -- you come into</p> <p>14 Room 100 -- is that right? First of all you go</p> <p>15 to Room 108, then end up in Room 100, correct?</p> <p>16 "A. Yes.</p> <p>17 "Q. And you describe the people that were</p> <p>18 in that room. You're comfortable with your</p> <p>19 recordation of the people?</p> <p>20 "A. Yes.</p> <p>21 "Q. Do you remember seeing Lieutenant</p> <p>22 Delmonico?</p> <p>23 "A. Yes, sir, I did.</p> <p>24 "Q. He's not a person you can easily miss,</p> <p>25 either. I mean --</p> <p>"A. Yeah, he's full of smiles. He's a</p> <p>gentleman.</p> <p>"Q. He's a -- he's a good -- but he's --</p> <p>you notice him when he's in the room?</p> <p>"A. Yes.</p> <p>"Q. And you've got there Lieutenant Glampe</p> <p>from 1A, and Captain Huffman from</p> <p>Investigations, and Lieutenant Delmonico from</p> <p>the Police Federation were in the room with you</p> <p>when you arrived?</p> <p>"A. Yes."</p>	382	<p>1 charge of anything? He's there as the</p> <p>2 Federation rep?</p> <p>3 A. I believe so.</p> <p>4 Q. Okay. For example, other people in the room</p> <p>5 could be Feder...</p> <p>6 Jindra is a Federation person, too, --</p> <p>7 A. Yes.</p> <p>8 Q. -- on the board?</p> <p>9 A. Yes, he is.</p> <p>10 Q. Other members -- other people are members of the</p> <p>11 Federation. You and Lieutenant Halvorson and --</p> <p>12 you know, you're all members; right?</p> <p>13 A. Yes.</p> <p>14 Q. Now Huffman wouldn't be because I think as</p> <p>15 captain you can't be; right?</p> <p>16 A. I don't know what the rules are.</p> <p>17 Q. Okay. Well, when do you think you --</p> <p>18 A. Well, we have lieutenants on the board, so I'm</p> <p>19 assuming lieutenants can.</p> <p>20 Q. Yeah.</p> <p>21 A. I don't know -- I'm not aware of who isn't [sic]</p> <p>22 or isn't.</p> <p>23 Q. Okay. You generally make the assumption they</p> <p>24 are, I take it then?</p> <p>25 A. What?</p>

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383	<p>1 Q. Members of the Federation union itself?</p> <p>2 A. There's a lot of people who aren't actually</p> <p>3 members.</p> <p>4 Q. Really?</p> <p>5 A. I don't know what the number is.</p> <p>6 Q. Sworn employees?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Lieutenant Halvorson and Sergeant Jindra</p> <p>9 are there for a specific defined police purpose;</p> <p>10 correct?</p> <p>11 A. Ah...</p> <p>12 MS. FUNDINGSLAND: I'm going to object</p> <p>13 on foundation.</p> <p>14 BY MR. BENNETT:</p> <p>15 Q. Well, you -- you know they're there as escort</p> <p>16 officers under the critical incident policy?</p> <p>17 A. Sergeant Halvorson was my escort officer, not</p> <p>18 Lieutenant Halvorson.</p> <p>19 Q. Okay.</p> <p>20 A. Ah --</p> <p>21 Q. I'm just using... He is a lieutenant today?</p> <p>22 A. Yes, he is.</p> <p>23 Q. He was a sergeant then?</p> <p>24 A. He was a sergeant then.</p> <p>25 Q. They were both sergeants?</p>	385	<p>1 A. Okay.</p> <p>2 MS. FUNDINGSLAND: Is that a question?</p> <p>3 BY MR. BENNETT:</p> <p>4 Q. Do you understand that to be true?</p> <p>5 A. I don't know.</p> <p>6 Q. Did they keep you separate? Jindra and</p> <p>7 Halvorson keep you and Gorman separate?</p> <p>8 A. We were separate at the scene.</p> <p>9 Q. And at Room 100?</p> <p>10 A. Well, it's a big room. We were in the same room</p> <p>11 together as I recall.</p> <p>12 Q. But they're not supposed to let you sit next to</p> <p>13 each other and talk about the incident, are</p> <p>14 they?</p> <p>15 A. I don't believe -- I don't know. I don't know</p> <p>16 what they're supposed to do.</p> <p>17 Q. Did they?</p> <p>18 A. I don't recall exactly where I was in that room</p> <p>19 or who I was standing to [sic]. Everybody --</p> <p>20 there was people in the room.</p> <p>21 Q. But it's -- like you say, it's a --</p> <p>22 A. We weren't -- we weren't alone together, me and</p> <p>23 Gorman in the room, if that's what you're</p> <p>24 asking.</p> <p>25 Q. Correct.</p>
384	<p>1 A. They were both sergeants.</p> <p>2 Q. And at the scene there -- you're supposed to be</p> <p>3 assigned escort officers for the -- if there are</p> <p>4 multiple officers involved for -- one for each</p> <p>5 involved officer; correct?</p> <p>6 A. I believe so, yes.</p> <p>7 Q. And the escorts -- the escorts have to be at</p> <p>8 least rank of sergeant. They can be above, but</p> <p>9 they have to be at least a sergeant?</p> <p>10 A. I think so. I'm not sure.</p> <p>11 Q. Okay. And they have a job. They take you to</p> <p>12 the designated -- they -- they sit with you at</p> <p>13 the scene while you're needed; right?</p> <p>14 A. I don't know what their specific -- I don't --</p> <p>15 I'm not a sergeant, so I don't know what their</p> <p>16 specific duties are.</p> <p>17 Q. Well, according to the policies they -- they're</p> <p>18 there to deal -- sit with you at the scene as</p> <p>19 soon as they get there.</p> <p>20 A. Okay.</p> <p>21 Q. I mean they're basically there to babysit you,</p> <p>22 aren't you [sic]? Would that be a fair...</p> <p>23 A. Yeah, that's fine.</p> <p>24 Q. And they're supposed to keep the involved</p> <p>25 officers separate.</p>	386	<p>1 A. Okay. We weren't alone.</p> <p>2 Q. Were you next to each other in the room? I mean</p> <p>3 the room -- that room is much bigger than this</p> <p>4 large conference room, isn't it?</p> <p>5 A. I believe so.</p> <p>6 Q. Yeah. It's a pretty big room.</p> <p>7 A. Well, there's -- it's broken up in cubicles.</p> <p>8 Q. Uh-huh. Were you in a cubicle with Halvorson?</p> <p>9 A. No.</p> <p>10 Q. Was Jindra in a cubicle with Gorman?</p> <p>11 A. I don't know.</p> <p>12 Q. Did you see Gorman?</p> <p>13 A. Yes.</p> <p>14 Q. How far away was he?</p> <p>15 A. I don't know. We don't have -- we didn't have,</p> <p>16 you know, cordoned-off fences. If I walked past</p> <p>17 him, or if we stood together, if we stood next</p> <p>18 to each other, I don't know.</p> <p>19 Q. Okay. Did you talk to Delmonico?</p> <p>20 A. Yes.</p> <p>21 Q. Okay.</p> <p>22 A. I believe so.</p> <p>23 Q. And you did so as -- as the union rep?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. And Lieutenant Halvorson said that he sat</p>

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387	<p>1 with you at the scene, was with you at the</p> <p>2 transport to the -- to Room 100 and at 100 and</p> <p>3 even went with you to HCMC; is that correct?</p> <p>4 A. I was... He was my escort officer -- sergeant.</p> <p>5 And we were together.</p> <p>6 Q. As far as you're concerned did he dutifully</p> <p>7 complete his escort duty?</p> <p>8 A. I mean we were in... Like I said, he didn't</p> <p>9 hold my hand and sit next to me. We were all in</p> <p>10 the same room together. I don't know if he was</p> <p>11 right next to me the whole time or even at the</p> <p>12 scene if he was never out of my sight. I don't</p> <p>13 know.</p> <p>14 Q. You never reported any discussion with</p> <p>15 Sergeant Jindra in Room 100 to the Homicide</p> <p>16 investigators; correct?</p> <p>17 A. Ah... I don't know.</p> <p>18 Q. Well, do you remember having any conversation</p> <p>19 with Jindra in the presence of Halvorson?</p> <p>20 A. I had a conversation with Jindra, but I don't</p> <p>21 know if Halvorson was a part of it.</p> <p>22 Q. Well, Jindra was the escort for Gorman.</p> <p>23 A. Yes.</p> <p>24 Q. Halvorson was the escort for you.</p> <p>25 A. Yes.</p>	389	<p>1 Q. Okay. So you -- the only person you told, that</p> <p>2 you remember telling at Room 100 or at the</p> <p>3 scene, was Jindra, that you had the pen camera?</p> <p>4 A. That I can recall.</p> <p>5 Q. Why Jindra?</p> <p>6 A. He's a Federation rep.</p> <p>7 Q. Well, so is Delmonico.</p> <p>8 A. Yeah.</p> <p>9 Q. He did a supplement. He never mentions talking</p> <p>10 to you.</p> <p>11 A. I don't think I did about that. But I -- I'm</p> <p>12 sure that I talked to him. He was -- I don't</p> <p>13 think he was ever at the scene. He came in at</p> <p>14 Room 100, I believe.</p> <p>15 Q. Okay. Well, how did Gorman get to Room 100?</p> <p>16 A. He rode with Jindra.</p> <p>17 Q. Well, wouldn't he have to -- he rode from the</p> <p>18 scene with Jindra?</p> <p>19 A. I believe so.</p> <p>20 Q. Well, who are you saying didn't come to the</p> <p>21 scene, Delmonico?</p> <p>22 A. I don't think Delmonico was at the Y. I think</p> <p>23 he just came into Room 100.</p> <p>24 Q. Which would be very typical of a Federation rep.</p> <p>25 A. I -- okay.</p>
388	<p>1 Q. And the idea is to keep you two separate.</p> <p>2 Why... Do you remember Jindra talking to</p> <p>3 you?</p> <p>4 A. I -- I mean I talked to everybody down there.</p> <p>5 And I talked to Jindra, too.</p> <p>6 Q. About what?</p> <p>7 A. I told him that I -- that I had a pen cam.</p> <p>8 Q. Did you tell Halvorson, your escort officer</p> <p>9 that?</p> <p>10 A. No.</p> <p>11 (Sotto voce comments.)</p> <p>12 BY MR. BENNETT:</p> <p>13 Q. Did you tell Lieutenant Delmonico that?</p> <p>14 A. I don't know if I did.</p> <p>15 Q. Well, --</p> <p>16 A. I don't think so.</p> <p>17 Q. -- your rep, though, is Delmonico; right?</p> <p>18 A. I don't know that we had an assigned rep.</p> <p>19 Q. Well, you -- you know that Jindra had an</p> <p>20 assigned role as an escort officer for the other</p> <p>21 involved officer; right?</p> <p>22 A. Yeah.</p> <p>23 Q. Okay. Was he doing his job?</p> <p>24 A. I'm not a sergeant. I don't know what</p> <p>25 specifically his job is.</p>	390	<p>1 Q. Well, is that true or not?</p> <p>2 A. I don't know.</p> <p>3 Q. The critical incident policy indicates you're</p> <p>4 supposed to give statements within 48 hours of</p> <p>5 the critical incident to ensure the continuity</p> <p>6 of the investigation.</p> <p>7 Was there some reason you couldn't give a</p> <p>8 statement in the first 48 hours?</p> <p>9 A. I don't think so.</p> <p>10 Q. Bruno didn't say anything at your statement</p> <p>11 either, did he?</p> <p>12 A. I don't -- I don't recall. I don't think so.</p> <p>13 Q. Okay. You had given Bruno prior to the</p> <p>14 statement the zip drive, the USB?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Do you know that he had -- did you see</p> <p>17 him do anything with it?</p> <p>18 A. He left the room and went and talked to</p> <p>19 Sergeant Klund, I think.</p> <p>20 Q. Okay.</p> <p>21 A. They didn't talk about -- in front of me.</p> <p>22 Q. Okay. They didn't? Did not?</p> <p>23 A. No.</p> <p>24 Q. Okay.</p> <p>25 MR. BENNETT: Let's go off the record</p>

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391	<p>1 for a second.</p> <p>2 VIDEOGRAPHER: Off the video record at</p> <p>3 1:55 P.M.</p> <p>4 (Recess taken.)</p> <p>5 VIDEOGRAPHER: This is Disc 4.</p> <p>6 We are on the record at 2:09 P.M.</p> <p>7 BY MR. BENNETT:</p> <p>8 Q. Showing you what's been marked as Exhibit 50-A.</p> <p>9 That shows the position of the pen camera at the</p> <p>10 scene outside the YMCA on the street where</p> <p>11 Officer Kingdon took your picture; correct?</p> <p>12 A. Yes.</p> <p>13 Q. And would it be fair to say that that is the</p> <p>14 same relative position the pen camera was in</p> <p>15 from the time of the incident until then?</p> <p>16 A. No.</p> <p>17 Q. Well, okay. Why not?</p> <p>18 A. Because it's riding up a lot higher than I would</p> <p>19 carry it. It would have been tucked down in,</p> <p>20 all the way down to the top of that clip. I can</p> <p>21 only assume that it rode up during the struggle.</p> <p>22 Q. Okay. But it's still on there?</p> <p>23 A. (Pausing.)</p> <p>24 Q. Right?</p> <p>25 A. Is that a question?</p>	393	<p>1 THE WITNESS: I think I gave him the box</p> <p>2 that it came in.</p> <p>3 MR. BENNETT: Uh-huh.</p> <p>4 THE WITNESS: But I couldn't tell you</p> <p>5 what it was -- what kind it was.</p> <p>6 BY MR. BENNETT:</p> <p>7 Q. Did you ever buy the spy sunglasses?</p> <p>8 A. No.</p> <p>9 Q. Um...</p> <p>10 MR. BENNETT: I figured it was worth a</p> <p>11 try.</p> <p>12 THE WITNESS: These are not spy</p> <p>13 sunglasses that you're looking at.</p> <p>14 MR. BENNETT: Kind of double spyware.</p> <p>15 BY MR. BENNETT:</p> <p>16 Q. You don't have a guy named "Cue" that you deal</p> <p>17 with?</p> <p>18 A. We have -- there's a guy in the department named</p> <p>19 "Cubes," but not "Cue."</p> <p>20 Q. Exhibit 72 and 73 are the photos taken by the</p> <p>21 Crime Lab personnel, correct, in Room 100?</p> <p>22 A. Yes, I believe so.</p> <p>23 Q. All right. Let's look with reference at -- just</p> <p>24 show those for the record, will you? So that</p> <p>25 we...</p>
392	<p>1 Q. Yeah. It's still on your --</p> <p>2 A. It's still in my pocket.</p> <p>3 Q. -- blouse, in the poc- -- in the same pocket</p> <p>4 your pen there exists in; right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And the -- and the business end of that</p> <p>7 piece of equipment is the part above the clip;</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. And that's the -- that's the camera and the</p> <p>11 microphone; correct?</p> <p>12 A. I don't know where the microphone is, but the</p> <p>13 lens is in -- in the front on the top.</p> <p>14 Q. Showing you Exhibit 97, is this the same or one</p> <p>15 very similar to the one you bought?</p> <p>16 A. It's not the same for sure.</p> <p>17 Q. It isn't the same? Where was your --</p> <p>18 A. Ah...</p> <p>19 Q. What was your manufacturer?</p> <p>20 A. I don't know. I mean I just... I got it. I saw</p> <p>21 it on the Internet and I bought it. I didn't</p> <p>22 keep a record of...</p> <p>23 I mean I think I gave Stillman, if that's</p> <p>24 his name.</p> <p>25 MS. FUNDINGSLAND: Uh-huh.</p>	394	<p>1 A. (Complying.)</p> <p>2 Q. The pen camera is no longer visible?</p> <p>3 A. Well, it's visible in my shirt, but it's not --</p> <p>4 you can't see the color of it or the black part.</p> <p>5 Q. The lens is not sticking above your...</p> <p>6 A. No.</p> <p>7 Q. The clip is not above the top of your --</p> <p>8 A. No.</p> <p>9 Q. -- shirt blouse?</p> <p>10 Correct?</p> <p>11 A. No.</p> <p>12 Q. It's been moved from the picture -- from the way</p> <p>13 it was in Exhibit 50-A; correct?</p> <p>14 A. It's in a different position. It wasn't... To</p> <p>15 my -- to my recollection it wasn't moved</p> <p>16 deliberately.</p> <p>17 Q. Well... The clip --</p> <p>18 A. Let me -- can I rephrase that?</p> <p>19 Q. Sure.</p> <p>20 A. It wasn't moved deliberately to conceal it, if</p> <p>21 that's -- if that's what you're getting at.</p> <p>22 Q. Well, I'm going to ask you a few more</p> <p>23 questions --</p> <p>24 A. Okay.</p> <p>25 Q. -- to get --</p>

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395	<p>1 A. All right.</p> <p>2 Q. -- at that, --</p> <p>3 A. Okay.</p> <p>4 Q. -- you know.</p> <p>5 A. I'm sorry for interrupting you.</p> <p>6 Q. No, that's fine. I... It's -- it's probably</p> <p>7 better that you made that known.</p> <p>8 You know, I -- I'm going to ask you some</p> <p>9 questions and we're not going to talk about --</p> <p>10 I'm going to talk about things...</p> <p>11 I mean you knew where the pen camera was at</p> <p>12 the scene; correct?</p> <p>13 A. In this particular picture?</p> <p>14 Q. Exhibit 50-A?</p> <p>15 A. I...</p> <p>16 Q. You knew it was still in place on your blouse?</p> <p>17 A. What I... As I said earlier, when you asked if</p> <p>18 that's the normal...</p> <p>19 (Sotto voce comments.)</p> <p>20 BY MR. BENNETT:</p> <p>21 Q. Yeah.</p> <p>22 A. When you -- when you asked if that's the normal</p> <p>23 position I said, "No, it's not."</p> <p>24 Q. It's --</p> <p>25 A. Normally --</p>	397	<p>1 can be --</p> <p>2 A. Yes, --</p> <p>3 Q. -- seated.</p> <p>4 A. -- there's more -- there's more space than what</p> <p>5 -- what would be on that one --</p> <p>6 Q. Yeah.</p> <p>7 A. -- or this one.</p> <p>8 But -- okay. What I'm trying to say is it's</p> <p>9 very smooth material and it wouldn't be uncommon</p> <p>10 for that pen to ride up out of the pocket.</p> <p>11 If you bend over with this vest, with my</p> <p>12 duty belt, you can see my... Well, not when I'm</p> <p>13 sitting in this chair, but even my magazine</p> <p>14 carriers can touch the bottom of that and push</p> <p>15 it up. So it wouldn't be in... It's not</p> <p>16 unusual at all for me to be tucking it back in.</p> <p>17 Now had I tucked it back in and that clip</p> <p>18 didn't catch it, it would have gone inside my</p> <p>19 pocket. That's not unusual at all.</p> <p>20 Q. Well, the clip kept it in place... You can see</p> <p>21 the clip is at least about a half an inch onto</p> <p>22 your duty blouse right there, on Exhibit 50-A?</p> <p>23 A. Well, I had I'd say more like a quarter to</p> <p>24 3/8ths.</p> <p>25 Q. Pretty hard to measure that, but okay.</p>
396	<p>1 Q. -- a little high?</p> <p>2 A. -- it would be -- no -- yeah, it's high.</p> <p>3 Q. Yeah.</p> <p>4 A. And I -- and what I said is I assume that...</p> <p>5 It's hard for me to explain without it.</p> <p>6 Can I have that Sharpie?</p> <p>7 Q. Sure.</p> <p>8 A. This is a similar material, smooth, --</p> <p>9 Q. Yeah.</p> <p>10 A. -- very smooth plastic.</p> <p>11 And I guess a similar clasp, but that metal</p> <p>12 thing is not --</p> <p>13 VIDEOGRAPHER: Excuse me. I'm going to</p> <p>14 interrupt. Can you --</p> <p>15 MR. BENNETT: She can't see the --</p> <p>16 THE WITNESS: (Displaying Sharpie pen.)</p> <p>17 VIDEOGRAPHER: That's fine. Thank you.</p> <p>18 That will work.</p> <p>19 BY MR. BENNETT:</p> <p>20 Q. But the clip is in a low -- lower situated, so</p> <p>21 it... There's --</p> <p>22 A. It is.</p> <p>23 Q. There's a thing --</p> <p>24 A. There's --</p> <p>25 Q. Above the clip is more space so that the lens</p>	398	<p>1 But it stayed in there throughout this</p> <p>2 entire fight and throughout the entire event.</p> <p>3 A. It did.</p> <p>4 Q. In fact, you didn't shut it off until you looked</p> <p>5 at Mercil and hit the button; correct?</p> <p>6 A. I -- I shut it off, yes.</p> <p>7 MR. BENNETT: Show -- let's show that</p> <p>8 clip.</p> <p>9 (Pen camera video playing.)</p> <p>10 BY MR. BENNETT:</p> <p>11 Q. There's Gorman and Sergeant Johnny Mercil;</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. And there's you shutting off the pen camera.</p> <p>15 A. Yeah.</p> <p>16 (Pen camera video stopped.)</p> <p>17 BY MR. BENNETT:</p> <p>18 Q. Did you turn away from Mercil to shut off the</p> <p>19 pen camera for any reason?</p> <p>20 A. I don't think I did.</p> <p>21 MR. BENNETT: Play it again.</p> <p>22 (Pen camera video playing.)</p> <p>23 BY MR. BENNETT:</p> <p>24 Q. You realize now that the camera is on; right?</p> <p>25 A. (No audible response.)</p>

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399	<p>1 MR. BENNETT: And shut it off.</p> <p>2 (Pen camera video stopped.)</p> <p>3 THE WITNESS: As you can see, they're --</p> <p>4 they're in my line of sight --</p> <p>5 MR. BENNETT: Okay.</p> <p>6 THE WITNESS: -- when I turn it off.</p> <p>7 BY MR. BENNETT:</p> <p>8 Q. So you saw Mercil at the time you decided to</p> <p>9 turn the pen camera off?</p> <p>10 A. I -- no, I spoke to -- I spoke to him earlier</p> <p>11 when it was on.</p> <p>12 Q. Okay.</p> <p>13 A. It's -- I believe that's on the video.</p> <p>14 Q. Okay. Why didn't you give it to Mercil?</p> <p>15 A. I don't know. I guess I didn't think of it, to</p> <p>16 give it -- I mean this -- this was still</p> <p>17 happening. Mr. Smith was still in the</p> <p>18 gymnasium. I wasn't thinking about --</p> <p>19 Q. All right.</p> <p>20 A. -- that.</p> <p>21 Q. Who moved the pen from the condition it was in</p> <p>22 50-A to the condition it is in 72 and 87,</p> <p>23 Exhibit 72 and 87?</p> <p>24 A. Me.</p> <p>25 Q. Okay. And the... You had... Did you</p>	401	<p>1 BY MR. BENNETT:</p> <p>2 Q. Would you disagree?</p> <p>3 A. I disagree.</p> <p>4 Q. Okay.</p> <p>5 A. I disagree with your premise.</p> <p>6 Q. Okay.</p> <p>7 A. What I was trying to explain to you before is I</p> <p>8 don't know at what point that got -- it got</p> <p>9 pushed back in by me.</p> <p>10 What I'm saying is it moves in there. And</p> <p>11 it may have even moved up even higher and I</p> <p>12 pushed it down. The clip may not have caught</p> <p>13 the pocket. It may have gone up farther than it</p> <p>14 was right here.</p> <p>15 Q. And it was just a coincidence that you didn't</p> <p>16 turn it in, as well?</p> <p>17 MS. FUNDINGSLAND: Object to the form of</p> <p>18 the question.</p> <p>19 BY MR. BENNETT:</p> <p>20 Q. Well, you had three cameras on you.</p> <p>21 A. I -- I was advised by Sergeant Jindra to discuss</p> <p>22 it with Fred Bruno.</p> <p>23 Q. Well, you have a duty to turn in evidence before</p> <p>24 the end of your shift; correct?</p> <p>25 A. Not always.</p>
400	<p>1 consciously move it?</p> <p>2 A. Well, as I -- this is what I was trying to</p> <p>3 explain to you.</p> <p>4 Q. Now I'm asking consciously.</p> <p>5 A. I consciously pushed it back in my pocket, yeah.</p> <p>6 I'm trying to explain to you why -- how it may</p> <p>7 have gone from this position to that position.</p> <p>8 Q. Okay. Well, if you'd had pushed down on it...</p> <p>9 Well, let's get -- take this out.</p> <p>10 If -- if you pushed down on the pen, as it</p> <p>11 is shown on Exhibit 50-A, the clip would have</p> <p>12 just gone down further; correct?</p> <p>13 A. That's true.</p> <p>14 Q. On the outside of your blouse?</p> <p>15 A. That's correct.</p> <p>16 Q. The clip is not on the outside of your blouse --</p> <p>17 A. No, it's not.</p> <p>18 Q. -- in Exhibit eighty -- 72?</p> <p>19 A. No, it's not.</p> <p>20 Q. And it looks to me like some care was taken to</p> <p>21 make sure that the camera -- the pen and its</p> <p>22 lens is in -- totally in your -- in your duty</p> <p>23 blouse.</p> <p>24 MS. FUNDINGSLAND: I'll object to the</p> <p>25 form of the question.</p>	402	<p>1 Q. Not always?</p> <p>2 A. No.</p> <p>3 Q. When are you -- when -- when is -- what's the</p> <p>4 exception? What's the excuse?</p> <p>5 A. A lot of what we do is reporting. And we go to</p> <p>6 burglaries, we go to thefts, we go to situations</p> <p>7 all the time where somebody has footage of the</p> <p>8 incident, but they don't know how to put it on a</p> <p>9 format that -- a portable format that we can</p> <p>10 take from them. So there's a lot of times we</p> <p>11 leave evidence at -- digital evidence at the</p> <p>12 scene and an investigator, once the victim --</p> <p>13 victim, business, whatever, gets that format off</p> <p>14 of their computer or off of their cameras and</p> <p>15 gives it to investigators. So that -- that's a</p> <p>16 scenario where we wouldn't take evidence</p> <p>17 immediately and inventory it.</p> <p>18 Q. Well, you don't take the thing home, though, do</p> <p>19 you? You wouldn't take the -- the video</p> <p>20 evidence from the business home to your house</p> <p>21 and download it onto your personal computer,</p> <p>22 would you?</p> <p>23 A. I didn't think that that was going to be a</p> <p>24 problem. I was going to take it off and put it</p> <p>25 onto a flash drive and present it.</p>

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403	<p>1 Q. Well, you have computer forensic people in the</p> <p>2 department; correct?</p> <p>3 A. Yes.</p> <p>4 Q. You knew that before?</p> <p>5 A. Yes.</p> <p>6 Q. You've seen them work before?</p> <p>7 A. Yeah.</p> <p>8 Q. You know they could have downloaded everything</p> <p>9 on your -- just as easy as you?</p> <p>10 A. They could have.</p> <p>11 Q. And do you know that they used write-blocking</p> <p>12 software, things to maintain the integrity of</p> <p>13 the evidence?</p> <p>14 A. No. I don't know that. I don't know what that</p> <p>15 is.</p> <p>16 Q. Well, do you think they do things to maintain</p> <p>17 the chain of custody and the integrity of the</p> <p>18 evidence in the Minneapolis Police Department</p> <p>19 Crime Lab?</p> <p>20 A. Probably. I would assume so.</p> <p>21 Q. Well, they prosecute people --</p> <p>22 A. I haven't worked in the Crime Lab. I don't know</p> <p>23 their --</p> <p>24 Q. I understand but, you know, you're not...</p> <p>25 A. I'm tolling you that I assume so.</p>	405	<p>1 Q. Afternoon. Yeah. You had a disposable?</p> <p>2 A. I didn't have that.</p> <p>3 Q. Wasn't it in your car?</p> <p>4 A. I don't know if that came from my car or if it</p> <p>5 came from Officer Kingdon's car. I don't recall</p> <p>6 where that was from.</p> <p>7 Q. He said he gave it -- his report says it came</p> <p>8 from yours.</p> <p>9 A. Okay. Well, maybe it did.</p> <p>10 Q. Okay. You had the Taser --</p> <p>11 A. But it wasn't something that I -- it was in the</p> <p>12 trunk. At that time we were using disposable</p> <p>13 cameras.</p> <p>14 Q. Yeah.</p> <p>15 A. So I may have had one -- there may have been one</p> <p>16 just in the trunk.</p> <p>17 Q. Okay.</p> <p>18 A. Okay.</p> <p>19 Q. But there were three cameras that -- and they</p> <p>20 got two of them that they obviously took,</p> <p>21 developed the film off of or captured the image;</p> <p>22 correct?</p> <p>23 The Taser -- you've seen the Taser video?</p> <p>24 A. Yeah.</p> <p>25 Q. You created that by using your Taser; right?</p>
404	<p>1 Q. Okay. You're not an inexperienced person. You</p> <p>2 know they make convictions of child</p> <p>3 pornographers and -- and all sorts of things</p> <p>4 from computer forensic imaging; correct?</p> <p>5 A. Yes. But I'm telling you I don't know what the</p> <p>6 process is.</p> <p>7 Q. I believe you. That's fine. I'm not arguing</p> <p>8 with you about that, but you know they have --</p> <p>9 they've got to have a way to make it so the</p> <p>10 evidence is foundationally acceptable in court.</p> <p>11 A. Okay.</p> <p>12 Q. I mean do you agree with that as a premise?</p> <p>13 A. Yes.</p> <p>14 Q. All right. I mean you wouldn't -- you know</p> <p>15 you're not supposed to take bullets that you</p> <p>16 fire at a scene home, right, or casings? Either</p> <p>17 the projectiles or the casings? You know what</p> <p>18 -- that you couldn't do that; right?</p> <p>19 A. That I wouldn't -- I wouldn't disturb it off the</p> <p>20 ground. That's something for other people to</p> <p>21 collect. I might point it out, but I wouldn't</p> <p>22 collect it.</p> <p>23 Q. You had two -- you had three cameras with you</p> <p>24 that -- that evening.</p> <p>25 A. Three?</p>	406	<p>1 A. Yes.</p> <p>2 Q. If you accept my premise that they got the</p> <p>3 digital out of your squad, then they used the</p> <p>4 portable disposable camera from your squad?</p> <p>5 A. Yes.</p> <p>6 Q. And -- and you didn't -- you didn't turn over</p> <p>7 the pen camera that night to anyone at the scene</p> <p>8 or anyone in Room 100?</p> <p>9 A. That's correct.</p> <p>10 Q. And your guiding light, you want us to believe</p> <p>11 for that decision, was Jindra?</p> <p>12 MS. FUNDINGSLAND: I'll object to the</p> <p>13 form of the question.</p> <p>14 THE WITNESS: I -- I wasn't -- advised</p> <p>15 to let my attorney --</p> <p>16 BY MR. BENNETT:</p> <p>17 Q. Did he do that in front of Halvorson?</p> <p>18 A. Oh, I have --</p> <p>19 Q. Or did you have some secret conversation?</p> <p>20 A. I don't know where Sergeant Halvorson was at the</p> <p>21 time.</p> <p>22 Q. Well, Sergeant Halvorson said he would have had</p> <p>23 no part in you not turning that in.</p> <p>24 A. Okay.</p> <p>25 MS. FUNDINGSLAND: Is that a question?</p>

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407	<p>1 MR. BENNETT: Well...</p> <p>2 BY MR. BENNETT:</p> <p>3 Q. Did you and Jindra steal off alone and have some</p> <p>4 availability to talk in Room 100? Did he leave</p> <p>5 his escort duty to talk to you?</p> <p>6 MS. FUNDINGSLAND: Objection, compound</p> <p>7 question.</p> <p>8 THE WITNESS: I don't know.</p> <p>9 BY MR. BENNETT:</p> <p>10 Q. Can you tell me... All right.</p> <p>11 Was Gorman in on that conversation?</p> <p>12 A. He may have been. Again, I don't know when --</p> <p>13 where everybody was standing and when everybody</p> <p>14 was standing where.</p> <p>15 Q. I want to ask you something about this part of</p> <p>16 the video.</p> <p>17 (Pen camera video playing.)</p> <p>18 BY MR. BENNETT:</p> <p>19 Q. Do you remember that? You reaching out to grab</p> <p>20 a hold of him, Gorman?</p> <p>21 A. I mean I remember -- I can see it.</p> <p>22 Q. What were you doing?</p> <p>23 A. I don't know.</p> <p>24 Q. At all?</p> <p>25 A. I'm not sure what that was for.</p>	409	<p>1 known evidence that you would expect to be</p> <p>2 inventoried prior to the close of his shift?</p> <p>3 "A. Correct."</p> <p>4 BY MR. BENNETT:</p> <p>5 Q. Do you disagree with that?</p> <p>6 A. Yes.</p> <p>7 Q. Okay.</p> <p>8 (Brian Anderson Embedded Video</p> <p>9 Page 227, Line 3 - Page 227, Line 18)</p> <p>10</p> <p>11 "Q. And when officers are involved in a</p> <p>12 critical incident you have very specific</p> <p>13 policies about the handling of evidence and the</p> <p>14 handling of the officer that tries to maintain</p> <p>15 the propriety of that -- of the evidence related</p> <p>16 to that incident so that there's sort of a</p> <p>17 public confidence; right?</p> <p>18 "A. Correct."</p> <p>19 "Q. Okay. So in this situation, you know,</p> <p>20 you knew that Officer Callahan was involved in</p> <p>21 the critical incident.</p> <p>22 "You wouldn't expect that he would take</p> <p>23 evidence related to that critical incident home</p> <p>24 with him as a matter of training and policy,</p> <p>25 would you have?</p> <p>"A. Identified evidence, no."</p> <p>BY MR. BENNETT:</p> <p>Q. And you had already... You had bought the</p> <p>camera, as we indicated, for the very purpose of</p> <p>creating evidence; correct?</p> <p>A. Not -- I -- I'm not going to say necessarily for</p> <p>creating evidence. If -- if that would have,</p> <p>you know, come to pass, then so be it. It was</p> <p>more for personal protection and -- and evidence</p> <p>of that personal protection.</p>
408	<p>1 Q. You don't have any present recollection of what</p> <p>2 you were doing?</p> <p>3 A. I don't.</p> <p>4 Q. Okay.</p> <p>5 (Brian Anderson Embedded Video</p> <p>6 Page 143, Line 13 - Page 144, Line 4)</p> <p>7</p> <p>8 "Q. So -- so what you're testifying to is</p> <p>9 you're aware of some training about positional</p> <p>10 asphyxia at the MPD prior to 2010, but you don't</p> <p>11 recall a specific course on positional asphyxia?</p> <p>12 "A. Correct."</p> <p>13 "Q. Okay."</p> <p>14 "A. It was always contextual within</p> <p>15 whatever the main base training was for</p> <p>16 defensive tactics. That was always kind of</p> <p>17 thrown in there without being documented.</p> <p>18 "Q. Okay. And so you would have expected</p> <p>19 that -- that all MPD officers prior to 2010</p> <p>20 would have had some instruction about restraints</p> <p>21 or positional asphyxia?</p> <p>22 "A. As far as what I've taught, yes. As</p> <p>23 what other instructors, I cannot say.</p> <p>24 "Q. Okay."</p> <p>25</p> <p>BY MR. BENNETT:</p> <p>Q. Do you remember getting taught about positional</p> <p>asphyxia in the basic defensive tactics course?</p> <p>A. I don't.</p> <p>Q. Okay.</p> <p>(Brian Anderson Embedded Video</p> <p>Page 218, Line 23 - Page 219, Line 6)</p> <p>Q. Well, my understanding of your</p> <p>testimony is that all known evidence should be</p> <p>inventoried prior to the end of an officer's</p> <p>shift.</p> <p>"A. Correct."</p> <p>"Q. So if Officer Callahan understood that</p>	410	<p>1 Q. Well, you knew when -- if in fact you had this</p> <p>2 conversation with Sergeant Jindra, which I'm not</p> <p>3 entirely sure about, but if you did you knew</p> <p>4 that the pen camera was evidence, didn't you?</p> <p>5 MS. FUNDINGSLAND: Object to the form of</p> <p>6 the question.</p> <p>7 THE WITNESS: I didn't know at the time</p> <p>8 whether this was going to turn out the way that</p> <p>9 it did or if that -- you know, potentially I'd</p> <p>10 be getting sued. But it was my personal</p> <p>11 property and I consulted with Sergeant Jindra</p> <p>12 and he advi- -- and since we were going to be --</p> <p>13 the Federation was going to be providing an</p> <p>14 attorney to let the attorney decide.</p> <p>15 BY MR. BENNETT:</p> <p>16 Q. Well, your gun is your personal property?</p> <p>17 A. Yes.</p> <p>18 Q. Your bullets are your personal property? If you</p> <p>19 shoot somebody --</p> <p>20 A. My bullets are not my personal property.</p> <p>21 Q. I thought they -- they were. That's what</p> <p>22 everybody else testified to. Did they --</p> <p>23 A. I did not purchase these bullets.</p> <p>24 Q. Oh.</p> <p>25 A. These purchased -- these bullets were purchased</p>

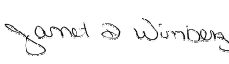

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411	<p>1 by the department and given to me every time I</p> <p>2 go to the range.</p> <p>3 Q. Okay. All right. That's fine. The gun is</p> <p>4 yours.</p> <p>5 A. I purchased it, yes.</p> <p>6 Q. And you'd have to give it up if you shot</p> <p>7 somebody with it, at least for a period of time,</p> <p>8 wouldn't you, --</p> <p>9 A. Ah...</p> <p>10 Q. -- as evidence?</p> <p>11 A. I haven't shot anybody, but that's my</p> <p>12 understanding.</p> <p>13 Q. I understand, but --</p> <p>14 A. That's my understanding.</p> <p>15 Q. Okay. But when you talked to Jindra you were</p> <p>16 talking to him about what you ought to do with</p> <p>17 evidence; correct?</p> <p>18 A. From a personal standpoint.</p> <p>19 Q. Well, you knew when you say, "I've got it all on</p> <p>20 here," that that's evidence, don't you? Are you</p> <p>21 -- are you -- are you really maintaining you</p> <p>22 didn't understand it was evidence?</p> <p>23 A. It was brand new territory that hadn't been</p> <p>24 covered before. I didn't know what to do with</p> <p>25 it.</p>	413	<p>1 undoubtedly evidence?</p> <p>2 A. It's being used as evidence.</p> <p>3 Q. Okay.</p> <p>4 (Brian Anderson Embedded Video</p> <p style="padding-left: 20px;">Page 224, Line 11 - Page 224, Line 15)</p> <p>5</p> <p style="padding-left: 20px;">"Q. I mean the fact that it's his personal</p> <p>6 property, does that impact the officer's</p> <p>7 obligation to inventory evidence at the end of a</p> <p style="padding-left: 20px;">shift?</p> <p style="padding-left: 20px;">"A. No."</p> <p>8</p> <p>9 BY MR. BENNETT:</p> <p>10 Q. Do you disagree with that?</p> <p>11 A. That's Officer An- -- or Sergeant Anderson's</p> <p>12 opinion.</p> <p>13 Q. That's -- no. That's the city of Minneapolis'</p> <p>14 opinion as the legal designee under</p> <p>15 Rule 30(b)(6).</p> <p>16 A. Okay.</p> <p>17 Q. Do you disagree with that?</p> <p>18 A. I didn't know that he was in charge -- I thought</p> <p>19 he was in charge of training, but...</p> <p>20 Q. That's who they -- that's who they put up there</p> <p>21 for -- to answer these questions.</p> <p>22 A. Okay.</p> <p>23 Q. They make the designation. They get to pick. I</p> <p>24 don't. That's who they put up.</p> <p>25 Do you disagree with his answer?</p>
412	<p>1 Q. Videotapes of incidents have always been</p> <p>2 evidence --</p> <p>3 A. Not from --</p> <p>4 Q. -- since you --</p> <p>5 A. Not as -- not from an officer's personal</p> <p>6 standpoint. Not from them personally doing it</p> <p>7 without it being issued by the department.</p> <p>8 Q. So what? What does that have --</p> <p>9 A. I mean --</p> <p>10 Q. What --</p> <p>11 A. -- do you want to present something to me that</p> <p>12 indicates it's -- it's been altered?</p> <p>13 Q. Do you want to present... We're not talking</p> <p>14 about alteration yet. Okay?</p> <p>15 A. So we're just talking about time?</p> <p>16 Q. We're talking about evidence. Yeah. Chain of</p> <p>17 custody and integrity of evidence.</p> <p>18 The... Do you want to -- do you want to</p> <p>19 fight with me any more about whether it's</p> <p>20 evidence?</p> <p>21 MS. FUNDINGSLAND: Ask a question that</p> <p>22 he can answer, Mr. Bennett.</p> <p>23 BY MR. BENNETT:</p> <p>24 Q. Well, do you agree that the pen camera can</p> <p>25 capture video and audio images that are</p>	414	<p>1 A. I do.</p> <p>2 Q. Okay.</p> <p>3 (Jeffrey Jindra Embedded Video</p> <p style="padding-left: 20px;">Page 63, Line 22 - Page 63, Line 25)</p> <p>4</p> <p style="padding-left: 20px;">"Q. You had every reason to believe that</p> <p>5 the pen camera would not be turned in by the end</p> <p>6 of his shift; correct?</p> <p style="padding-left: 20px;">"A. Ah, yes."</p> <p>7 BY MR. BENNETT:</p> <p>8 Q. Jindra knew it was evidence and it wouldn't be</p> <p>9 turned in by the end of his shift; right?</p> <p>10 MS. FUNDINGSLAND: Objection,</p> <p>11 speculation as to what Jindra knew.</p> <p>12 BY MR. BENNETT:</p> <p>13 Q. You told him about what was on the pen camera,</p> <p>14 didn't you?</p> <p>15 A. I told him that I had a pen camera. That I</p> <p>16 believed that it captured half of the incident.</p> <p>17 Q. Okay. Okay.</p> <p style="padding-left: 20px;">(Sotto voce comments.)</p> <p>18 MR. BENNETT: Let's go off the record</p> <p>19 for a bit.</p> <p>20 VIDEOGRAPHER: Off the video record at</p> <p>21 2:32 P.M.</p> <p>22 (Recess taken.)</p> <p>23 VIDEOGRAPHER: We are back on the video</p> <p>24 record. It is 2:43 P.M.</p> <p>25</p>

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415	<p>1 MR. BENNETT: I think we've been</p> <p>2 informed by Janet that I've got -- if we're</p> <p>3 going to use the traditional seven-hour boundary</p> <p>4 system I've got about 30 minutes.</p> <p>5 Is that correct?</p> <p>6 THE REPORTER: Yes.</p> <p>7 MR. BENNETT: And having said that we</p> <p>8 have this one sort of lingering dispute that I</p> <p>9 am aware of regarding the pen camera videos and</p> <p>10 the extent to which they have to be or should</p> <p>11 be, based on evidence deduced today, turned</p> <p>12 over.</p> <p>13 So I'm going to reserve the remaining time</p> <p>14 period and the right to ask for maybe a little</p> <p>15 more at this time for the purpose of finishing</p> <p>16 this, if we need to, after I have seen the</p> <p>17 remainder of the video.</p> <p>18 And, if possible, I'd like to avoid going</p> <p>19 back to the Boylan or Keyes or whatever I'd go</p> <p>20 back to, but that's at least the way I'm</p> <p>21 thinking right now, Lynne.</p> <p>22 MS. FUNDINGSLAND: All right. And I</p> <p>23 understand counsel's position.</p> <p>24 MR. BENNETT: Should we have him read</p> <p>25 and sign this continuation volume? I think that</p>	417	<p>1 STATE OF MINNESOTA)</p> <p>2 : ss CERTIFICATE</p> <p>3 COUNTY OF WASHINGTON)</p> <p>4 I, Janet D. Winberg, hereby certify</p> <p>5 that I reported the continuation of the</p> <p>6 videotaped deposition of TIMOTHY CALLAHAN, on</p> <p>7 the 16th day of October, 2012, in Minneapolis,</p> <p>8 Minnesota, and that the witness was, by me,</p> <p>9 first duly sworn to tell the truth:</p> <p>10</p> <p>11 That the testimony was transcribed by me and is</p> <p>12 a true record of the testimony of the witness;</p> <p>13 That I am not a relative, or employee, or</p> <p>14 attorney, or counsel of any of the parties; or a</p> <p>15 relative or employee of such attorney or</p> <p>16 counsel;</p> <p>17</p> <p>18 That I am not financially interested in the</p> <p>19 action and have no contract with the parties,</p> <p>20 attorneys or persons with an interest in the</p> <p>21 action that affects or has a substantial</p> <p>22 tendency to affect my impartiality;</p> <p>23</p> <p>24 That the right to read and sign the transcript</p> <p>25 by the witness was reserved.</p> <p>WITNESS MY HAND AND SEAL THIS 26th day of</p> <p>October, 2012.</p> <p></p> <p></p> <p>JANET D. WINBERG Registered Professional Reporter Notary Public Washington County, Minnesota.</p>
416	<p>1 makes sense.</p> <p>2 MS. FUNDINGSLAND: I think we should</p> <p>3 being that we may not be back.</p> <p>4 MR. BENNETT: Yeah, we may not be back,</p> <p>5 but...</p> <p>6 MS. FUNDINGSLAND: But -- yeah. Let's</p> <p>7 do that.</p> <p>8 MR. BENNETT: Let's do that anyway.</p> <p>9 And doing it again wouldn't be that big of a</p> <p>10 deal.</p> <p>11 MS. FUNDINGSLAND: No.</p> <p>12 MR. BENNETT: All right.</p> <p>13 VIDEOGRAPHER: We are off the video</p> <p>14 record at 2:45 P.M.</p> <p>15 (Adjourned at 2:45 P.M.)</p> <p>16 * * *</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	418	<p>1 STATE OF MINNESOTA)</p> <p>2 : SS CERTIFICATE</p> <p>3 COUNTY OF WASHINGTON)</p> <p>4 I, TIMOTHY CALLAHAN, certify that I have</p> <p>5 read and examined the typewritten transcript of</p> <p>6 the deposition taken of me in the matter of</p> <p>7 Larry E. Smith, et al., vs. Timothy Gorman,</p> <p>8 et al., on October 16, 2012, consisting of the</p> <p>9 preceding pages, and find the same to be true</p> <p>10 and correct (Except as follows):</p> <p>Reason</p> <p>Page Line Correction for Change</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 Dated this _____ day of _____</p> <p>24 _____</p> <p>25 TIMOTHY CALLAHAN Reporter: JDW</p>

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